Notices

Federal Register
Vol. 60, No. 243
Tuesday, December 19, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Japan (60 FR 10900). On September 25, 1995, the Court of International Trade (CIT) ordered the Department to correct two ministerial errors in the final results with respect to AFBs from Japan sold by Izumoto Seiko Co., Ltd. (IKS). Accordingly, we are amending our final results of administrative review of the antidumping duty orders on AFBs from Japan with respect to IKS. The reviews cover the period May 1, 1992, through April 30, 1993. The ''classes or kinds'' of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs).

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Michael F. Panfeld or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review, partial termination, and revocation in part of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, et al. (60 FR 10900). The review period is May 1, 1992, through April 30, 1993. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' of the final results referenced above.

One respondent, IKS, challenged the final results before the CIT, alleging ministerial errors in the final results for AFBs from Japan. On September 25, 1995, the CIT ordered the Department to correct the errors and publish the amended final results in the Federal Register.

The CIT ordered the Department to make the following corrections to its analysis for IKS: 1) to correct the erroneous calculation of a negative United States price (USP) for certain observations; and 2) to correct the erroneous inclusion of movement expenses incurred in Japan in the calculation of movement expenses (MOVT) for further manufactured merchandise. We have corrected the ministerial errors in IKS's margin calculations for the amended final results of review for the period May 1, 1992, through April 30, 1993.

Based on the correction of the ministerial errors in our calculations for IKS, we have determined that the following percentage weighted-average margins exist for the period May 1, 1992, through April 30, 1993:

Manufacturer/exporter, and country	BBs	CRBs	SPBs
IKS, Japan	4.65	([1])	([1])

[1] No U.S. sales during the review period.

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30955 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–814]

Certain Cold-Rolled Carbon Steel Flat Products From Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On August 2, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on Certain Cold-Rolled Carbon Steel Flat Products from Germany (A–428–814) (*Preliminary Results*). The review covers sales from one manufacturer of the subject merchandise to the United States and the period August 18, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments

received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Department published in the Federal Register (60 FR 39355) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Germany (58 FR 44170, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of these Reviews

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1010, 7209.24.1050, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7075, 7211.41.7085, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one exporter of certain cold-rolled carbon steel flat products, Thyssen AG (TAG). The review period is August 18, 1993, through July 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Petitioners and Thyssen requested a public hearing but later withdrew their requests. Petitioners and Thyssen filed case briefs and rebuttal briefs on September 1, 1995, and September 12, 1995, respectively.

Comment 1: Petitioners argue that fundamental and pervasive flaws in Thyssen's responses require the use of total best information available (''BIA''). Petitioners argue that the failure of the Department to apply total BIA provides a significant disincentive for respondents to comply with the Department's instructions and information requests in the future, and encourages them to respond selectively in accordance with what would be to their benefit in the margin calculation.

Thyssen counters that the Department correctly determined in its July 20, 1995, memorandum on the use of BIA (''July 20, 1995, memorandum'') that the use of total BIA is not warranted in this case, and that petitioners' ''total BIA'' argument grossly mischaracterizes the record and does not provide any new information which would warrant a departure from the Department's preliminary results. Thyssen argues that total BIA is reserved for those respondents who have been truly uncooperative or whose submissions have been so replete with errors as to make application of partial or neutral BIA impossible. *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts from France; et al; Final Results of Antidumping Administrative Reviews*, 60 FR 10900, 10908 (February 28, 1995). Thyssen argues that the Department's use of BIA should not unfairly penalize a respondent who substantially cooperates. *See, e.g., Allied-Signal Aerospace Co.* v. *United States*, 996 F. 2d 1185 (Fed. Cir. 1993); *NTN Bearing Corp. of America* v. *United States*, Slip Op. 93–129 (CIT July 13, 1993).

Department's Position: As discussed in the Department's July 20, 1995, memorandum, the Department applies total BIA when a respondent fails to submit information in a timely manner, or when the submitted data is sufficiently flawed, so that the response as a whole is rendered unusable. The Department considers the errors and inconsistencies in Thyssen's submission of such a nature that they have had a limited effect upon the analysis and, as appropriate, can be dealt with on an individual basis. Individual issues which petitioners argue warrant the use of total BIA, and Thyssen's rebuttals, are addressed below in Comments 2 through 4.

Comment 2: Petitioners argue that Thyssen's reporting of product characteristics was replete with mistakes and omissions and could not be conclusively verified by the Department given Thyssen's failure or refusal to provide mill certificate information. Petitioners argue that Thyssen's unreliable product comparisons and erroneous reporting preclude an accurate determination of the true dumping margin in this review, as demonstrated by the home market verification report. Furthermore, petitioners argue that product characteristics could not be conclusively verified because of Thyssen's failure to provide mill certificates or similar information that would conclusively demonstrate the physical properties of the merchandise in question. Petitioners argue that order documentation, product brochures, and Thyssen's ''List of Analysis'' directory do not indicate the particular specifications to which each transaction in fact conforms. Petitioners note that

while Thyssen has attempted to justify its failure to produce such documentation at verification by claiming that these documents generally are not requested by Thyssen's home market customers because of the extra charge, Thyssen's price list in its Section III response indicates that Thyssen does not always charge extra for preparation of information typically provided on mill certificates or similar documentation.

Thyssen responds that, as the Department noted in its July 20, 1995, memorandum, almost all of Thyssen's home market product characteristic errors involved products with the quality classification of ''other high strength'' that would not be used for matching purposes. Thyssen also argues that, as noted in the Department's July 20, 1995, memorandum, the only errors in Thyssen's U.S. sales product characteristics involved sales to specific customers which Thyssen brought to the Department's attention at the beginning of the product characteristic review in Germany, and which Thyssen had corrected by the beginning of the U.S. verification.

Thyssen argues that mill certificates were never required, as the Department's July 20, 1995, memorandum also noted, and that the Department properly did not demand access to Thyssen's magnetic tape records for whatever mill certificate information might have been available. Thyssen argues that it does not maintain mill certificates in its current ''database'' for more than three months after shipment for two reasons: these documents generally are not requested by Thyssen's customers, and so database access is not required; and the volume of business makes retention in the database impractical. Thyssen notes that the mill certificate information was and remains available on magnetic tape, but that retrieval of isolated pieces of data from this medium is time consuming. Thyssen notes that it was able to provide from its ''database,'' immediately upon request, a mill certificate for a sale in February 1995 for the only shipment where this document was requested by the customer. Thyssen argues that it provided the Department with mill certificates for all of its U.S. sales, where mill certificates are an order requirement, and argues that the Department confirmed that the ordered material corresponded to that which was produced and sold. Finally, Thyssen argues that petitioners' citation of a price list showing that some minimal information will be provided free of charge ''if selected and precisely ordered by the purchaser'' does not contradict the Department's finding that Thyssen charges extra for ''the vast majority of test certificates.''

Department's Position: Petitioners have questioned several aspects of Thyssen's reporting of product characteristics. First, we disagree with petitioners regarding the errors in reported product characteristics for home market sales involving the quality ''other high strength.'' These errors were discovered in a review of observations that Thyssen had designated with this specific quality. The specific sales in which errors were discovered were not used for matching purposes. After the discovery of this error, the Department examined additional ''high strength'' sales; no discrepancies were identified.

Regarding the majority of product characteristic errors for U.S. sales, the Department verified that Thyssen had identified the correct product characteristic information. We instructed Thyssen to incorporate those corrections in its final tape submission, and Thyssen did so in a satisfactory manner. Regarding mill certificates, the Department indicated in its verification outline of March 8, 1995, and throughout its review of product characteristics of home market and U.S. sales during verification in Germany, that it would be preferable if we were able to review the appropriate mill certificates for the observations in question. Thyssen indicated at verification that an attempt to locate available information for the period of review (''POR'') from magnetic tape would be very burdensome. In any case, the Department remains satisfied with Thyssen's presentation of documentation regarding the product characteristics of its reported sales. Although the documentation reviewed at verification in Germany indicated several errors committed by Thyssen in its reporting of product classifications, nothing was noted at verification that indicated that Thyssen shipped merchandise, as specified in its commercial invoices, that differed from the specifications noted in the corresponding purchase orders and in Thyssen's general production standards by grade. (Contrary to Thyssen's assertion, most of the mill certificates provided during the verification in Detroit were not used for purposes of product characteristic verification, as the verification of the product characteristics of pre-selected and surprise sales for both markets had already been completed during the verification in Germany.) As noted in the Department's July 20, 1995, memorandum, the Department did not insist that Thyssen's magnetic tape records be reviewed because the retrieval of isolated pieces of data from Thyssen's magnetic tape records would have been inordinately burdensome for Thyssen to have accomplished during verification.

Comment 3: Petitioners claim that the numerous corrections and clarifications provided by Thyssen demonstrate that Thyssen's response cannot be deemed reliable or usable. Petitioners argue that the nature of the errors precludes proper product matching, distorts claimed expenses and adjustments, and prevents an accurate analysis and substantiation of costs overall.

Thyssen argues that the clerical errors identified and corrected by Thyssen during the course of the review were inconsequential when compared to the millions of bits of information reported; that the Department noted numerous instances, in its verification reports, where no discrepancies were found; and that the Department correctly concluded in its July 20, 1995, memorandum that the problems found were not sufficient to render Thyssen's submission unreliable or unusable.

Department's Position: We disagree with petitioners. As reflected in the Department's July 20, 1995, memorandum and elsewhere in this final determination in regard to particular areas of concern, the Department properly allowed Thyssen to make corrections to its submissions. We determined that the remaining errors and inconsistencies did not warrant disregarding Thyssen's submission as a whole, and could be dealt with on an individual basis.

Comment 4: Petitioners assert that Thyssen failed to report cost information as requested by the Department, thereby rendering the company's responses unusable for the purposes of our final results. Specifically, petitioners first argue that Thyssen failed to provide a schedule of production quantities, thereby preventing the Department from tying control number specific cost of production (''COP'') and constructed value (''CV'') figures to Thyssen's accounting records. Petitioners argue that the verification of production quantities was crucial in determining the accuracy of Thyssen's reported COP and CV amounts because the company used production quantities to compute (1) the average per-unit costs contained in its cost center expense reports, (2) the per-ton basis costs that were common to all products within each cost center, and (3) all product-specific basis costs within each cost center as part of the ''tons per hour'' factor. Petitioners note that the Department has stated that the

failure of a respondent to show that the product-specific costs included in COP and CV are tied to the company's accounting records results in a failed verification. *See Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof From the Federal Republic of Germany); Final Results of Antidumping Duty Administrative Review,* 56 FR 31692, 31707 (July 11, 1991) (*AFBs From Germany*). Petitioners argue that, despite the Department's specific request for such a schedule, Thyssen refused to provide this information, claiming that it would be extremely burdensome, but failing to show why that was the case. Petitioners claim that the Department appears to have contradicted the record, including its own cost verification report, when it stated that ''Thyssen did report product-specific costs in that it computed actual product-specific costs using production quantities at each stage of the production process'' and that ''[t]hese production quantities were reviewed and tested at verification.'' Petitioners believe the cost verification report indicates that product-specific production quantity information was not provided to the Department at verification. Petitioners argue that the Department's ''alternative verification procedures,'' *i.e.,* the examination of fiscal-year ending inventory balances and movements in and out of a single warehouse, cannot be deemed to have demonstrated a link between production quantity information and Thyssen's financial records.

Petitioners also argue that Thyssen failed to identify product-specific costs as standard or actual costs, thereby preventing the Department from tying ''basis costs'' to actual production quantities. Petitioners argue that the Department has determined that it cannot use the cost response of a respondent which failed to provide actual costs and was unable to support its standard costs. *See Final Determination of Sales at Less Than Fair Value: New Steel Rail, Except Light Rail, from Canada,* 54 FR 31984, 31985–86 (August 3, 1989).

Petitioners argue that throughout the review Thyssen has failed to conclusively identify whether its reported cost figures are based on standard or actual cost amounts. Petitioner contends that all of the information on the record indicates that Thyssen's product-specific manufacturing costs for the COP and CV figures are based on standards for which variances must be calculated. Petitioners assert that the information on the record is inconsistent with statements from the Department's cost verification report that it ''tested that the standard costs were fully adjusted by the variances incurred and thus the submitted costs reflect the actual costs incurred during the respective fiscal periods.''

Petitioners conclude that Thyssen's failure to report cost information as requested requires the Department to reject the company's questionnaire responses and apply total BIA. Petitioners argue that the flaws in Thyssen's reporting of COP and CV preclude the Department from conducting its sales-below-cost test and prevent the Department from having confidence in the difference-in-merchandise (''difmer'') data, which are needed in the Department's margin calculations. Petitioners argue that, if the Department determines not to reject Thyssen's responses on the whole, the Department must, at the very least, apply as BIA to Thyssen's cost information the highest cost of manufacturing for all COP and CV values from sales in this review.

Thyssen counters that there is no doubt that the Department verified the company's actual production costs and actual production quantities. The Department utilized an exacting standard to verify Thyssen's submitted costs and the results of the Department's verification are supported by substantial evidence. Respondent argues that petitioners' claims must be rejected.

Thyssen argues that the Department's statements in its July 20, 1995, memorandum regarding this issue are accurate, contrary to the assertions of petitioners. Thyssen argues that its own submissions and the Department's cost verification report confirm that the actual production quantities were provided and verified. The actual costs were incurred by each processing cost center, based upon actual production, actual yield, actual work time and standard performance.

Furthermore, Thyssen argues that petitioners have mischaracterized the purpose of the Department's request for product-specific quantity information which was provided by alternative means. According to Thyssen, the request for quantity information pertained not to the compilation of production costs, but rather was designed to allow the Department to reconcile to Thyssen's inventory.

Department's Position: We disagree with petitioners' allegation that Thyssen failed the cost verification. The Department's verification provided reasonable assurance of the accuracy of Thyssen's reported costs, and our cost verification report outlined all of the testing which we performed and noted any exceptions or deficiencies in the results of that testing. As stated recently by the Court of Appeals for the Federal Circuit, the Act ''gives Commerce wide latitude in its verification procedures.'' *American Alloys Inc.* v. *United States,* 30 F.3d 1469, 1475 (Fed. Cir. 1994). The standard for verification is not to verify all information or to require perfect accuracy. ''Verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness, so that Commerce can justifiably rely on that information.'' *Tatung Co.* v. *United States,* Slip Op. 94–195 (CIT December 14, 1994). Accordingly, as detailed below, we are satisfied that the shortcomings identified in the cost verification report regarding Thyssen's data do not undermine the reliability of Thyssen's submission as a whole and do not warrant resort to BIA.

Contrary to petitioners' assertions, we do not believe that Thyssen's omission of product-specific (*i.e.,* control number-specific) production quantities renders the company's questionnaire response unreliable for purposes of calculating COP and CV. As Thyssen explained in its response and as we observed at verification, the company does not maintain production quantities on such a product-specific basis as part of its normal accounting system. Instead, Thyssen relies on total production quantity figures at each of its steel production stages to compute an average per-unit coil cost for all products. Thyssen then converts this average coil cost to a product specific cost based on a standard table of ''extras,'' which are discussed further below. Thus, the total production quantities at each production stage are determinative, as relied upon by Thyssen to calculate the per-stage costs which are then accumulated to determine the coil production cost.

As part of our verification testing, we required Thyssen to provide accounting records showing actual production quantities at each stage of production. In order to verify the accuracy of Thyssen's reported per-unit costs we examined production quantities and total production costs for selected cost centers within specific production stages. We found no discrepancies between the production quantities used by Thyssen to compute the actual weighted-average cost reported to the Department and the company's normal production records.

In contrast to Thyssen, the respondent in question in *AFBs From Germany,* the case cited by petitioners, was able to report the relevant information (regarding labor, overhead and other

expenses) on a model- or product-specific basis. The Department determined, however, that it could not tie the reported model-specific amounts to the respondent's internal accounting records and financial statements, information which was successfully verified. *AFBs From Germany,* 56 FR at 31707. Being unable to devise a methodology to better allocate labor and overhead costs, the Department relied upon total BIA. *Id.* Following a challenge by respondent, the CIT remanded the *AFBs From Germany* determination, stressing that the actual information provided by respondent was accurate and verified. The CIT required the Department to further explain why, instead of relying upon total BIA, it had not supplied its own methodology or that of another respondent. *Nippon Pillow Block Sales Co.* v. *United States,* 820 F. Supp. 1444, 1455 (CIT 1993). Following remand, the CIT upheld the Department's determination that it could not develop an allocation methodology or use that of another respondent which would allow it to use the previously verified data. *Nippon Pillow Block Sales Co.* v. *United States,* 837 F. Supp. 434, 436 (CIT 1993).

Hence, as demonstrated by both the Department's initial determination and the CIT's two decisions, *AFBs From Germany* stands for the principle that the Department should rely upon a party's information to the extent possible. Here, because we found Thyssen's cost information as well as its accounting methodology reasonable and verifiable, we see no reason for resorting to BIA.

With respect to petitioners' claim that it is unclear whether Thyssen reported standard or actual costs, it is clear from the computer tape submitted by Thyssen and from the verification report that Thyssen reported the actual weighted-average cost of producing cold-rolled coil. The adjustments Thyssen made to adjust the base cost to actual cost are described in the cost verification report at pages 5–7. Thyssen adjusted the average cost of coil by three factors on the computer tape: the computer variables CREXT1 and CREXT2 (''extras'') accounted for composition, size, width, and form differences between the average product and the unique product; the computer variable THMOADJ adjusted the average coil cost for year-end accruals, price and overhead variances. These three computer variables adjusted the average coil cost to actual product-specific cost.

Petitioners' reliance upon *New Steel Rail From Canada* is misplaced. In that case, the Department rejected the respondent's COP information after determining that it could not be verified. The Department found, among other deficiencies, that the respondent had developed information for the investigation based on the standard product costs used by the company, ''which were not part of the normal financial accounting system and which were for a period subsequent to the period of investigation.'' *New Steel Rail From Canada,* 54 FR at 31985. Despite having a cost system which reported actual costs, the company in question ''chose not to use this information for its response.'' *Id.* By contrast, there is no evidence in the record of this review indicating that Thyssen deviated from its normal accounting methodology except to the extent necessary to meet the Department's reporting requirements.

We also disagree with petitioners' contention that it is inappropriate to use standard machine times as a basis on which to compute labor cost for specific products. The use of standard machine times as a reasonable and appropriate allocation basis is well substantiated in both accounting and Departmental practice. *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Welded Stainless Steel Pipes from the Republic of Korea,* 57 FR 27731, 27733 (June 22, 1992). Machine hours effectively relate the labor cost incurred to the specific product. We find it reasonable and not distortive to use standard machine hours to allocate actual processing costs to specific products.

In sum, Thyssen supported its COP and CV figures with substantial evidence on the record as is indicated by the company's questionnaire responses, supplemental responses and verification exhibits. We reviewed and tested the accuracy and completeness of Thyssen's submitted COP and CV data and did not identify any problems which would cast doubt on the company's response as a whole. Accordingly, we have relied on Thyssen's cost response as the basis for our final results of this administrative review.

Comment 5: Petitioners argue that, should the Department determine not to disregard Thyssen's cost response, it must still account for Thyssen's failure to provide actual costs of material inputs from related parties. Petitioners argue that this failure prevents the verification of the valuation of materials acquired from related suppliers and requires the application of BIA.

Petitioners first contend that Thyssen's provision of financial statements or reports for a related iron ore supplier and a related ferrous scrap supplier in lieu of actual costs was insufficient for determining whether transfer prices are above or below the cost of production. Petitioners cite the final determination in the underlying investigation, which stated that ''[f]or the Department to be assured that the transfer prices are above costs, the Department must be able to test the transfer prices against the actual costs of production of the inputs. * * *'' *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany,* 59 FR 37136, 37151 (July 9, 1993) (*Steel from Germany*). Petitioners argue that the Department's verification of Thyssen's related iron ore supplier was inadequate to show whether transfer prices were above costs, and did not account for the fact that the overall profit on that supplier's income statement may obscure the fact that it incurs costs, on sales to Thyssen that are most likely not incurred on other sales, such as transportation and additional processing costs. Petitioners argue that the COP information provided by the related scrap supplier are also insufficient to demonstrate that the merchandise was sold above the cost of production. Furthermore, petitioners argue that Thyssen failed to distinguish between the cost of merchandise sold to Thyssen and the cost of merchandise sold to other customers. Consequently, petitioners argue that Thyssen failed to demonstrate that the transfer prices paid were above the supplier's cost of production, and therefore the application of BIA is warranted.

Thyssen responds that petitioners' claims ignore the cost verification report, the accompanying exhibits and analysis, as well as the substantial documentation provided by Thyssen. Thyssen points to its March 8, 1995, submission at 8–17 and accompanying exhibits 11–15, and pages 12–16 and exhibit G of the Department's May 17, 1995, cost verification report. Thyssen argues that the Department did not base its decision to accept related party input suppliers' prices solely on profit information in the financial statements. Further, Thyssen provided extensive information relating to sales quantities and production costs for its related iron ore supplier which established that transfer prices were above actual production costs. Thyssen counters that given its related iron ore suppliers'

product mix, petitioners' suggestion that potentially differing terms of sale could have resulted in production costs exceeding transfer prices is absurd on its face.

In regard to scrap sales, Thyssen quotes the cost verification report at 16 which concluded that the ''Rhine region scrap division, the only division providing scrap to Thyssen Stahl AG (''TSAG''), was profitable on a DM per ton basis.'' Thyssen states the Department acted reasonably in using the transfer prices submitted in determining COP and CV in the absence of any evidence that the cost data supplied was unreliable or any evidence of record more probative than that which Thyssen and its related suppliers submitted.

Further, Thyssen contends that the cost information submitted by petitioners cannot be considered because it consists of factual information available to petitioners prior to publication of the preliminary determination and therefore was not timely filed. *See NSK Ltd.* v. *United States,* 798 F. Supp. 721, 725 (CIT 1992).

Department's Position: The Department disagrees with petitioners. Thyssen submitted evidence that the prices paid to related suppliers for the most significant inputs identified by the Department were at arm's length and were not at prices below the related suppliers' cost of production. The Department tested the submitted prices from a major related iron ore supplier and a major related scrap supplier. The Department found that the iron ore prices from unrelated and related suppliers were the same. The Department found that scrap prices from unrelated and related suppliers were comparable. The Department also tested that the prices were above the cost of production. The Department computed a cost per ton of iron ore from the constant currency income statements of the major related iron ore supplier for the years ending December 31, 1993 and December 31, 1994. We compared this amount to the average sales price, noting that the transfer price was higher than the average cost. It was appropriate in this case to use the average cost calculation because the major iron ore supplier's sole business is the sale of iron ore; therefore, financial results are not affected by other lines of business. Petitioners' argument that the profit on domestic sales may far exceed the profit on export sales is speculative and not supported by evidence on the record. Export sales constituted the majority of the related suppliers' sales. Export sales commanded significantly higher prices than domestic sales; this higher price should reflect any additional processing or transportation costs envisioned by petitioners.

In addition, at verification we reviewed the profit analysis of the major scrap supplier's Rhine region division, which supplies Thyssen with its ferrous scrap, and concluded that the division was profitable and therefore its sales of scrap were at prices above the cost of production.

Comment 6: Petitioners assert that the Department should use BIA for the CV of material inputs. Petitioners argue that for purposes of calculating CV, it is not sufficient that the transfer prices of major inputs reflect market value. Rather, section 773(e)(2) of the Act requires the Department to disregard the transfer price of a major input and use the actual cost of producing the input if the transfer price is below the related supplier's COP for that input. *See Antifriction Bearings From France, supra,* 60 FR at 10924. Petitioners argue that Thyssen's failure to provide credible evidence that the transfer price for iron ore was above the cost of production despite numerous requests from the Department for this information constitutes reasonable grounds to believe or suspect that the transfer prices paid by Thyssen were less than the cost of production. With respect to ''non-major'' inputs, petitioners argue that Thyssen failed to demonstrate that its transfer prices were at arm's length as, except for scrap, which the Department examined at verification, Thyssen provided only self-selected invoices which cannot be considered representative of prices.

Department's Position: The Department disagrees with petitioners. As discussed above in response to comment 5, the Department's testing at verification revealed that Thyssen's related party did not offer preferential pricing to related suppliers for major inputs. Moreover, we verified that major inputs were purchased at prices that were not below their cost of production. We are satisfied with Thyssen's submissions regarding this issue, as verified. With respect to materials purchased from related suppliers which consisted of a small part of the cost of manufacturing—so-called ''non-major'' inputs—the Department elected not to verify these amounts. We determined that these inputs had a minimal effect on the total cost of manufacturing. Given this fact, the constraints of time, and the nature of verification (see response to comment 4), we did not consider it necessary to verify these amounts individually.

Comment 7: Thyssen argues that, for purposes of its COP and CV calculations, the Department incorrectly reduced Thyssen's reported interest income by interest/dividends earned on security investments of working capital. Thyssen disputes the Department's rationale that ''the Department does not generally allow dividends as an offset to financing expense because dividends are not considered to be short-term in nature.'' According to Thyssen, only short-term income from current assets was included in the interest income offset. Thyssen argues that, since this income was attributable to Thyssen's ''short term investments of its working capital,'' it should not have been excluded from the interest income offset. *See, e.g., Antifriction Bearings From France,* 60 FR at 10926; *and Television Receivers, Monochrome and Color from Japan; Final Results of Administrative Review,* 56 FR 23281, 23282–83 (May 21, 1991). Thyssen argues that a cost verification exhibit confirms that its claim was limited to income from current assets and did not include interest from long term securities and interest other than from current assets.

Petitioners agree with the Department's preliminary determination that Thyssen has not demonstrated that the source of the claimed income is short-term in nature.

Department's Position: Thyssen has not demonstrated that it is entitled to an offset to interest expenses for income derived from dividends. The Department's long-established practice is to deny an offset for income of this nature. *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea,* 57 FR 42942, 42953 (September 17, 1992); *Final Determination of Sales at Not Less Than Fair Value: Saccharin From Korea,* 59 FR 58826, 58828 (November 15, 1994). The CIT recently affirmed the Department's general standard in *NTN Bearing Corp.* v. *United States,* Slip Op. 95–165 (CIT Oct. 2, 1995). Relying on its earlier decision in *Timken Co.* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994), the court clarified that to qualify for an offset, interest income must be related to the ''ordinary operations of a company.'' *NTN Bearing* at 32. While this standard does not require that interest income be tied directly to the production of the subject merchandise, a respondent must show ''a nexus between the reported interest income'' and its ''manufacturing operation.'' *Id.* at 33; *see Timken* at 1048. Unlike interest income earned from the short-term investment of working capital,

only rarely will dividend income earned from a company's investment activities meet this standard. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994).

Thyssen argues in its brief that its dividend income qualifies as an offset because it is ''short-term'' income from current assets, such as ''interest on current bank accounts, interest on time and fixed-term deposits and interest on short-term securities.'' However, the verification exhibit referred to by Thyssen as support actually characterizes the income in question as ''dividends from securities of working capital.'' Cost Verification Report, Exhibit K. This is very similar to the facts in *NTN Bearings,* where the CIT upheld the Department's denial of the offset. *NTN Bearing* at 33. *See also Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review,* 56 FR 34180, 34184 (July 26, 1991). Indeed, Thyssen made little if any effort to demonstrate why its dividend income qualified as an offset. Therefore, because Thyssen failed to show the necessary nexus between its dividend income and manufacturing operations, we have denied the claimed offset.

Comment 8: Thyssen reported separate cost and allocated expense data for sales observations according to the fiscal year in which the sales took place. The Department conformed its computer programs so that they could utilize these fiscal year data. Thyssen argues that the Department incorrectly calculated one weighted-average home market direct selling expense and one weighted-average home market indirect selling expense for the entire POR. Thyssen argues that this is inconsistent with the Department's utilization of separate fiscal year costs and expenses for all of the other elements utilized in calculating constructed value.

Petitioners argue that calculating two such general expenses per control number (''CONNUM''), as requested by Thyssen, would improperly separate the class or kind into two categories, each of which has a separate cost. Petitioners argue more generally that the reporting of two costs and/or expenses per CONNUM conflicts with the statute and Department practice, distorts the effects of the costs and expenses, and is administratively burdensome. Consequently, petitioners argue that the Department should re-calculate a single weighted average for all costs and expenses covering the two fiscal periods.

Department's Position: We disagree with petitioners' assertion that the reporting of costs for the two fiscal periods covered by the POR violates the antidumping statute which directs the Department to calculate for constructed value, the ''general expenses and profit equal to that usually reflected in sales of merchandise in the same general class or kind as the merchandise under consideration.'' Thyssen did calculate general expenses for the same class or kind of merchandise in accordance with the statute for the two fiscal periods encompassed within the POR. We have determined that computing general expenses by fiscal period does not, in effect, divide the class or kind of merchandise because the calculation for each period covers the entire class or kind. Using expenses associated with each fiscal period has not distorted our analysis because we have used contemporaneous prices and expenses. Contrary to petitioners' assertions, attempting to recalculate a single weighted average for all costs and expenses covering the two fiscal periods would be extraordinarily burdensome. We inadvertently did not account for two fiscal years in the instance noted by Thyssen, and have adjusted the programming language for weighted-average home market direct and indirect selling expenses so those calculations are in accordance with the Department's general use of separate fiscal year data. In this instance we have used the reported data.

Comment 9: Thyssen argues that the Department, through clerical error, improperly calculated Thyssen's fiscal 1992/93 cost of manufacture for cost of production. Thyssen argues that the Department failed in one instance, due to a missing zero, to follow its June 16, 1995, COP, CV, and Further Manufacturing Concurrence Memorandum in correcting Thyssen's thirteenth month adjustment.

Department's Position: We agree with Thyssen, and have incorporated the correct information in the programming for the final results.

Comment 10: Thyssen asserts that the Department improperly failed to adjust for physical differences in merchandise when comparing U.S. sales to home market sales falling within the same control number (or CONNUM, identified in the sales data bases as CONNUMU and CONNUMH, respectively).

According to Thyssen, it reported its variable manufacturing costs on a weighted-average basis for each CONNUMU and CONNUMH, with the weighted average derived from actual costs attributable to each individual invoice. Consequently, Thyssen argues that the material costs, labor costs and overhead expenses were not necessarily identical for all sales within a particular CONNUM. Similarly, because the physical characteristics of the merchandise grouped together in the U.S. sales listing often differed from the physical characteristics of merchandise grouped together in the home market sales listing, the variable cost of manufacturing for U.S. sales (VCOMU) often differed from variable cost of manufacturing for home market sales (VCOMH) for product groupings with the same identifying CONNUM.

As noted in the May 17, 1995, cost verification report at 22, ''the variable cost of manufacturing in the home market sales listing and the U.S. sales listing was computed by calculating a variable cost of manufacturing for each sale and weight averaging all sale specific model costs within the control number.'' Thyssen asserts that the Department verified that Thyssen had quantified its product-specific cost differences resulting from differences in physical characteristics not reflected in the model matching characteristics upon which the determination of specific CONNUMs is based. Therefore, according to Thyssen, the Department established that the differences in the VCOMH and VCOMU for product groupings with the same identifying CONNUM were based on the physical differences in the merchandise actually falling within each group.

As support, Thyssen refers to section 771(16)(A) of the Act, which uses the phrase ''identical in physical characteristics.'' Because this phrase is not defined, Thyssen argues that it must be construed in accordance with its common meaning, *i.e.,* ''exactly the same.'' Thyssen cites various cases where the Department noted that its product groupings are not necessarily limited to a single ''identical'' product. *See, e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28364–66 (June 24, 1992); *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Final Determination of Sales at Less than Fair Value,* 54 FR 18992, 19072 (May 3, 1989). Thyssen concludes that the Department has refused to make adjustments for differences in costs of producing merchandise only when the products in question had identical physical characteristics. *See Import Administration Policy Bulletin,* No. 93.2 (July 29, 1992).

In response, petitioners argue that it is well established in the cold-rolled carbon steel flat products cases that all products which have the same CONNUM are considered by the Department to be ''identical'' for the purpose of applying Section 773(a)(4)(C). For example, Appendix V of the questionnaire from the underlying investigation states that ''[f]or purposes of these investigations, products will be considered 'identical' in thickness if they fall within the same thickness range * * * regardless of the actual thickness of the products''; ''products will be considered 'identical' in width if they fall within the same width range identified * * * regardless of the actual width of the merchandise''; ''and ''[n]o difference in merchandise adjustment (difmer) may be claimed for products that are within the same thickness or width range, but differ in actual measurement.'' Similarly, the Department stated that, in following such an approach for determining which sales are of ''identical'' merchandise, ''if there are 'identical' matches according to our designated criteria, we will not make an adjustment for any additional differences in merchandise (difmer).''

Petitioners argue that, in the present review, CONNUMs have been defined such that each CONNUM has a unique set of identifiers for the matching criteria established by the Department. As a result, products sold in the United States and home markets which have the same CONNUM would share the same ''identifier'' for all of the Department's product-matching criteria and, accordingly, the Department was correct in not making difmer adjustments for U.S. and home market products with the same CONNUM.

Department's Position: We disagree with respondent. As explained below, the Department correctly declined to make difmer adjustments when U.S. sales were matched to what we determined to be home market sales of identical merchandise (*i.e.*, when the U.S. and home market sales in question possessed the same product characteristics as set forth by the Department in its model matching criteria).

Section 771(16) of the Act directs the Department to compare sales of home market merchandise which are ''such or similar'' to merchandise sold in the United States. In accordance with section 771(16)(A), the Department first identifies and compares that merchandise which is ''identical'' in physical characteristics, followed by sales of merchandise which is most ''similar'' in physical characteristics. To make these determinations, the Department devises a hierarchy of commercially meaningful characteristics suitable to each class or kind of merchandise. The Department considers merchandise to be identical within the meaning of section 771(16)(A) when all the relevant characteristics match.

The courts have recognized that the Department has broad discretion ''to choose the manner in which 'such or similar' merchandise shall be selected.'' *Koyo Seiko Co.* v. *United States,* 66 F.3d 1204, 1209 (Fed. Cir. 1995). This discretion extends to determining which products properly should be considered identical.

However, the Department is not authorized to grant difmer adjustments within identical product categories. Under section 773(a)(4)(C) of the Act, the Department may only adjust for cost differences between two products which are ''similar'' in physical characteristics, and in this way compensate for any difference in the price derived solely from the physical difference between the two products compared.

Basing its product matching criteria on commercially meaningful characteristics permits the Department to draw reasonable distinctions between products for matching purposes, without attempting to account for every possible difference inherent in certain classes or kinds of merchandise. Given the tremendous number of variations between products in the various flat-rolled carbon steel product categories, including cold-rolled steel, the Department has followed this approach in the present case, beginning with the original less-than-fair-value investigation. As such, the Department may define certain products as being ''identical'' within the meaning of section 771(16)(A), even though they contain minor differences. *See Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Mexico,* 55 FR 29244, 29247–48 (July 18, 1990). Similarly, the Department need not account for every conceivable physical characteristic of a product in its hierarchy. Thus, a range of products may be considered ''identical'' within the meaning of the statute.

For instance, as Thyssen correctly notes in its case brief, many steel products would have been treated by the Department as identical (*i.e.*, in the same CONNUM) even when their widths differed from one another, because this product characteristic is identified in terms of ranges (*e.g.*, 40 to 60 inches as identifier ''F'' for the width product characteristic). In other words, two sales could be classified in the same CONNUM even if one was of merchandise with a width of 41 inches and the other was of merchandise with a width of 59 inches because both would fall within the width category identified as ''F''.

At the outset of the present review, when it had an opportunity to comment on the hierarchy of product matching criteria, Thyssen failed to argue that it considered the Department's width and thickness product categories overly broad, nor did Thyssen argue that additional product characteristics should be included within the hierarchy. Because the products within each CONNUM are identical within the meaning of the statute, the VCOMH and VCOMU reported by Thyssen within individual CONNUMs do not provide a basis for making difmer adjustments.

Comment 11: Thyssen contends that the Department improperly compared U.S. sales of seconds to constructed value, rather than to home market sales of seconds. Thyssen acknowledges that home market seconds were sold at prices below cost. However, Thyssen cites the Senate Report accompanying the Trade Reform Act of 1974 to argue that neither the statute nor the Department's regulations mandate that all below cost home market sales be disregarded in calculating foreign market value. *See* S.Rep. No. 1298, 93d Cong., 2nd Sess. 173 (1974). Thyssen argues that in the steel industry it is normal business practice for all companies, including Thyssen, to sell secondary steel at less than the cost of producing prime steel of the same grade. At the same time, however, sales of seconds are relatively infrequent in comparison to sales of prime material and do not prevent a steel manufacturer from recovering production costs on all steel sales, primes and seconds, within a reasonable period in the normal course of trade. Thyssen contends that this result is directly contrary to the intent of Congress.

Thyssen argues that *IPSCO, Inc.* v. *United States,* 965 F.2d 1056, 1060 (Fed. Cir. 1992), which the Department cites at page 3 in its April 19, 1995, memorandum on treatment of non-prime merchandise (from Roland MacDonald to Joseph Spetrini, General Issue Case No. A–100–003), merely *permits* the Department to compare the prices of seconds to constructed value in appropriate circumstances; *IPSCO* does not mandate that result. Thyssen contends that the particular issue which it has raised, the question of whether Thyssen's sales of seconds were in sufficiently large quantities over a significantly lengthy period, is fact-

specific to the instant review and was not presented to the *IPSCO* court.

Petitioners respond that it is inappropriate to combine prime and non-prime merchandise in determining whether the quantity of below cost sales is sufficiently large to warrant disregarding those sales in determining FMV. Petitioners contend that Thyssen has taken the inconsistent positions that the Department should separate prime and non-prime merchandise for the arm's length test, but combine both types of merchandise for the cost test. Petitioners argue that the comparison of U.S. sales with CV is mandated by statute whenever such or similar home market merchandise fails the COP test, that Thyssen admits that its sales of seconds fail this test, and that, accordingly, U.S. sales of non-prime merchandise should be compared to CV. Petitioners add that Thyssen did not provide any evidence that the costs of the merchandise consisting of a combination of both prime and non-prime merchandise would be recovered over a reasonable period of time, even if such an analysis were relevant.

Department's Position: Thyssen is essentially requesting that the Department modify the below-cost test it applied in the preliminary results to include sales of seconds for matching purposes whenever the corresponding sales of prime were at above cost prices. In this regard, Thyssen mistakenly relies on the Senate report accompanying the 1974 Trade Reform Act to contend that the Department should not disregard sales of seconds, regardless of whether they were at prices below cost. We disagree.

The Act requires the Department to determine whether a respondent's sales were made over an extended period of time and in substantial quantities so as to warrant disregarding those sales in determining FMV. This test applies across sales of a model as a whole, whether they be prime, seconds or otherwise. *See* 19 U.S.C. § 773(b). The 1974 Senate report did list several exceptions to this test, including obsolete and end-of-model year merchandise, which the Department should not disregard regardless of the whether they were below cost.

This category of exceptions is narrow, however, and is designed only to permit the inclusion of below-cost sales which can be expected to occur on an ''infrequent'' basis. S. Rep. No. 1298, 93d Cong., 2d Sess. 173 (1974); *see also Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductor of One Megabit and Above From the Republic of Korea,* 58 FR 15467, 15476 (March 23, 1993). It is possible to verify whether merchandise claimed to be obsolete or end-of-model year actually falls within the exception. The exception does not include seconds, however, which tend to occur more frequently and which a party would be more inclined to ''systematically'' sell at prices which will not permit recovery of all costs. *See* S. Rep. 1298 at 173. It would also be more difficult to verify whether a product was properly classified as a ''second.''

In past cases, the Department has considered prime and secondary merchandise to be separate models for matching purposes. ''To do otherwise would distort the margins, since sales prices are dependent on the quality of the merchandise.'' *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 43327, 43328 (August 16, 1993). In *IPSCO,* the Court of Appeals upheld the Department's approach of applying the same cost to prime and secondary merchandise. *See IPSCO,* 965 F.2d at 1061. In this case, we computed the cost of Thyssen's secondary merchandise using a methodology consistent with that applied in the *IPSCO* case. Based on these cost figures, we found insufficient quantities of above cost sales and, accordingly used CV as FMV.

Comment 12: Thyssen argues that the Department improperly combined sales of prime and secondary merchandise in its arm's length test. According to Thyssen, the Department should conduct separate arm's length tests and calculate separate customer-specific weighted-average price ratios for prime and secondary merchandise. In support of its argument, Thyssen asserts that such treatment would be consistent with the Department's April 19, 1995, memorandum on the treatment of non-prime merchandise.

Petitioners respond that Thyssen misrepresents the Department's statements on this matter, indicating a serious misunderstanding on Thyssen's part as to how the arm's length test was applied in the present case. Petitioners describe the Department's arm's length test as first comparing the net price of sales of a CONNUM sold to a related customer with the net price of sales of a CONNUM sold to unrelated customers. Only then, petitioners argue, is the related customer-specific weighted-average price ratio calculated, by combining all CONNUMs, consisting of all prime and non-prime merchandise sold to both related and unrelated customers. The Department's test separates prime and non-prime merchandise in making the initial comparison of related and unrelated prices on a CONNUM-specific basis. It is this initial comparison to which the Department refers in its memorandum when it states that ''prime and seconds should be separated.'' Prime and non-prime merchandise are necessarily separated for this initial CONNUM-specific comparison because prime and non-prime merchandise do not share the same CONNUM. The separation of products on a CONNUM-specific basis for the initial price comparison is necessary because there are understandable differences in prices among CONNUMs, irrespective of whether the different CONNUMs consist of prime or non-prime merchandise. Petitioners argue that the objective of the Department's arm's length test is to determine whether sales to individual related customers are made at the same or greater prices than those at which sales of the same products are made to unrelated customers. To make this customer-specific determination, all sales of all CONNUMs, both prime and non-prime, must be combined, and, so, the Department combined all CONNUMs sold to related customers which are also sold to unrelated customers to determine the customer-specific weighted average price ratios.

Department's Position: We disagree with Thyssen. The Department's April 19, 1995, seconds memorandum, states that ''if sales of seconds to related parties are compared to sales of prime (or prime and seconds combined) to unrelated parties, the results of the arm's length test could be distorted.'' The memorandum concludes that, consequently, ''prime and seconds should be separated for purposes of conducting the arm's length test. . . .'' The recommendation section of the memorandum goes on to clarify, however, that the separation of prime and secondary merchandise is done on what amounts to a CONNUM-specific basis. In cases where sales of prime and secondary merchandise were reported together in the same CONNUM, the Department treated them as separate CONNUMs for purposes of the arm's length test. As petitioners point out, the Department would ordinarily follow this approach in the initial steps of conducting the arm's length test because there are understandable differences in prices among CONNUMs, irrespective of whether the different CONNUMs consist of prime or secondary merchandise. *See* April 19, 1995, memorandum at 2–3. In this specific case, Thyssen's seconds were already classified in separate CONNUMs distinct from sales of prime merchandise, meaning that the

Department was not required to make such an initial separation.

The purpose of the Department's arm's length test is to determine if total sales to a related party are at arm's length. To make this determination, we calculate, by CONNUM, prices to each related party as a percentage of prices of sales to unrelated parties. We then take a weighted average of this ratio for all CONNUMs sold to a given related party, including seconds and prime, to determine if sales to that related party are at arm's length. Thyssen has not demonstrated that the approach resulted in a distortion of the arm's length test. *See Usinor Sacilor* v. *United States,* 872 F.Supp. 1000, 1004 (CIT 1994).

Comment 13: Thyssen contends that the Department improperly calculated the VAT adjustment. Thyssen argues that in *Zenith Electronics Corporation* v. *United States,* 988 F.2d 1573 (Fed. Cir. 1993), the Federal Circuit held that the Department's practice of making a circumstance of sale adjustment to FMV to achieve tax neutrality was contrary to law, reasoning that ''Section 1677a(d)(1)(C), the section dealing with tax adjustments, does not provide for any adjustment to FMV to correct for tax-related distortion of the dumping margin,'' and that ''the specific provision of Title 19 for tax adjustments does not permit changes to FMV.'' *Id.* at 1580. Thyssen adds that in *Daewoo Electronics* v. *International Union,* 6 F.3d 1511, 1519–20 (Fed. Cir. 1993), the Federal Circuit held that the tax should be applied at the sale price at which the tax was actually assessed.

Thyssen argues that, in *Federal Mogul Corp.* v. *United States,* CAFC No. 94–1097 (Fed. Cir. August 28, 1995), the Federal Circuit expressly held that the Department had the authority to calculate the adjustment by taking the paid tax *amount* in the home market for the same merchandise, and adding ''that amount to the price actually paid in the United States.'' Slip Op. at 9. According to Thyssen, the Court reasoned that the tax neutral methodology which results from adding the identical tax amount to both the home market and the United States sides of the dumping equation ''clearly accords with international understandings, negotiated by this country regarding unfair trade policy,'' whereas any alternative methodology which artificially increases dumping margins may ''read a GATT violation into the statute.'' *Id.* at 22–23.

Thyssen argues that the Department's preliminary results are contrary to *Zenith* in that it adjusted FMV by the tax relating to expenses that were deducted from FMV. Thyssen argues that the Department's preliminary results are contrary to *Daewoo* in that its calculation methodology resulted in the tax being applied to an ex-factory price, rather than the sales price at which the tax was actually assessed. Thyssen argues that both *Zenith* and *Daewoo* prevent the Department from making any secondary adjustments in calculating the tax pursuant to section 772(d)(1)(C), and even if the Department had this authority, it must be limited to those isolated instances in which the primary tax adjustment created margins where none had previously existed. Thyssen argues that in the case of Thyssen a secondary adjustment could never be authorized, since Thyssen's deductible U.S. expenses exceed its deductible home market expenses, and since the Department's secondary adjustment artificially and significantly inflates dumping margins, in direct contravention to *Federal Mogul.*

Thyssen concludes that the Department's preliminary results methodology, which applies the VAT to a different point in the chain of commerce than the point at which the tax is assessed, and which creates a secondary tax adjustment to FMV, is directly contrary to *Federal Mogul, Zenith,* and *Daewoo.* Thyssen argues that the Department should add to USP the exact amount of the tax added to FMV, as authorized by *Federal Mogul,* or, alternatively, calculate the tax added to FMV in the manner reported by Thyssen (gross price less discounts, times 0.15) and calculate the tax added to USP by multiplying TINC's net sales price (gross price less cash discount, where applicable) times the tax rate.

Petitioners assert that the Department properly calculated the VAT adjustment in accordance with its statutory mandate and existing legal authority, which requires that an adjustment be made to USP to account for any VAT that may have been charged on the corresponding home market sale. To do this, the Department applied the rate from the home market to the U.S. sale and added this amount to USP.

Petitioners argue that, because *Federal Mogul* does not require that any particular methodology be used, the Department's methodology in this case is not precluded by the Court's decision. While Thyssen is correct in pointing out that the Court of Appeals did rule on the issue of the VAT adjustment methodology, and clearly upheld the Department's previous methodology of calculating the amount of tax paid on the home market sale and adding the amount of the tax to USP, the opinion does not indicate that this is the only methodology that the Department may use. To the contrary, petitioners argue, the Court does not state that use of this methodology is required by the statute, but rather that it is not precluded by the statute. Furthermore, petitioners argue, as demonstrated by its use in several earlier determinations by the Department, the methodology used in this review is entirely reasonable. *See, e.g., Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 59 FR 13700, 13701 (March 23, 1994); *Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 59 FR 1374, 1376 (January 10, 1994).

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul,* the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith,* 988 F. 2d at 1582, and which was suggested by that Court in footnote 4 of its decision. The CIT overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act, (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its long standing policy of tax-neutrality and with the GATT.

Comment 14: Thyssen argues that the Department, through clerical error, improperly failed to correct certain reported home market product characteristics. Thyssen argues that the Department did not in its arm's length test program make all of the product characteristics corrections made in its model match program.

Department's Position: We agree with Thyssen that the arm's length test program did not contain all of the product characteristic corrections made in the model match program. However, we note that this oversight had no effect upon the Department's analysis because CONNUMs, rather than product characteristics, are used within the arm's length computer program, and the merchandise in question would still be classified in the same distinct CONNUMs even if the product characteristics were corrected. Consequently, we have removed any reference to product characteristic corrections from the arm's length program.

Comment 15: Thyssen argues that the Department improperly excluded home market sales prior to February 1993 from its calculations. Thyssen argues that it is inconsistent for the Department to include in its analysis shipments to Thyssen's U.S. customers with dates of shipment from Germany during the POR regardless of the date of the requirements contract, while at the same time excluding all home market shipments with sale dates prior to February 3, 1993, even though the date of shipment from the mill, the functional equivalent of the shipment date from Germany for U.S. sale observations, is within the POR.

Thyssen argues that this is particularly egregious, given that the Department has resorted to BIA for certain of Budd's U.S. resales because Thyssen did not report home market sales back far enough; it argues that the Department cannot penalize Thyssen for underreporting and at the same time exclude transactions for being prior to the requested reporting period.

Department's Position: We disagree with Thyssen. The Department is applying BIA to the Budd sales with dates of sale in 1992 because Thyssen failed to report home market sales back far enough to provide home market sales contemporary with those Budd sales (see Comment 31). Normally we request home market sales for the entire period from the earliest U.S. sale date forward and would apply the arm's length test to all sales reported. However, Thyssen selectively reported sales prior to February 1993. Thyssen might have reported home market sales for an intervening period between the 1992 Budd sales and February 1993 based solely upon the effects of such reporting on the arm's length test. Therefore, to avoid the risk of distorting the arm's length test results, we disregarded those sales, which were not contemporaneous with any U.S. sales.

Thyssen's argument that some of the excluded home market sales were shipped during the POR, like the U.S. sales, is unpersuasive. The Department reviews shipments to the U.S. during the period of review. However, in order to make the price-to-price comparison, we look at the date of sale for the U.S. transaction, which may or may not be different than the date of shipment to the United States, and match it to a home market sale with a contemporaneous date of sale, which may or may not be the date of shipment in the home market. The fact that Thyssen considers the shipment to its home market customers the equivalent of shipment from Germany to the United States is not relevant for purposes of identifying home market sales for matching purposes.

Comment 16: Petitioners argue that the Department should deduct all direct and indirect selling expenses incurred on further manufactured sales made in the U.S. market from the gross prices associated with those sales. Petitioners argue that the Department's calculation of a share of U.S. direct and indirect selling expense variables is appropriate for purposes of calculating the ESP cap, but that for purposes of calculating U.S. price, all direct and indirect selling expenses should be deducted.

Thyssen counters that the computer programming language in question was present in the version of the program disseminated to all interested parties on October 13, 1994. Petitioners filed extensive comments on that program with the Department, but did not object to the Department's proposed reduction of U.S. price by only a share of U.S. direct and indirect selling expenses.

Department's Position: We agree with petitioners that the methodology followed by the Department in the preliminary results, to reduce U.S. price by only a share of U.S. direct and indirect selling expenses, was inappropriate. The Department inadvertently included this language in its computer program. Such a share should only be used in the calculation of the ESP cap or offset for further manufactured sales in order to capture the portion of the indirect selling expenses attributable to foreign manufacturing. We have corrected the programming to reflect the correct methodology. The fact that petitioners failed to comment on this issue prior to the preliminary results does not alter the fact that they have identified a program error that should be corrected.

Comment 17: Petitioners argue that, for U.S. sales observations which the Department determined required the use of BIA, the Department should not have applied what petitioners describe as neutral BIA, the deposit rate from the underlying investigation. Petitioners claim that Thyssen's submissions reflect widespread omissions and insufficiencies by Thyssen that require application of, at the least, adverse BIA. In support, petitioners emphasize the CIT's statement that, ''[a]lthough the ultimate purpose of BIA is not to punish, BIA is intended to be adverse and requires the use of adverse assumptions.'' *National Steel Corp.* v. *United States*, 870 F. Supp. 1130, 1136 (CIT 1994) (*National Steel*). Petitioners argue that, given Thyssen's numerous omissions and insufficiencies, it is highly probable that there remain other, undiscovered problems with Thyssen's submission.

Petitioners also assert that should the Department continue to apply neutral partial BIA in its final results, respondents would have no reason to

comply with the Department's requests for information knowing that the worst they could receive as BIA for any missing or incomplete information is the rate from the underlying investigation. Petitioners cite the CIT's reasoning that using ''BIA for only those segments of a submission that are rejected could permit a party * * * to select the data it believed would be to its benefit, leaving Commerce only to fill in the blanks.'' *Tatung Co.* v. *United States,* Slip. Op. 94–195 at 13 (December 14, 1994) (citing *Chinsung Indus.* v. *United States,* 705 F. Supp. 598, 601 (CIT 1989)). Petitioners argue that an appropriately adverse partial BIA would be either the higher of the margin from the investigation or the highest non-aberrant margin calculated for Thyssen's sales in this review; because the latter figure is not known to respondents until the final calculation of the margin at the end of the review, respondents would be unable to perform the cost/benefit analysis to allow them to selectively disclose only certain information.

Thyssen responds that the Department has broad discretion in choosing BIA, and need only give a reasonable explanation of its choice. *See Neuweg Fertigung GmbH* v. *United States,* Slip Op. 92–137 (CIT August 20, 1992). Thyssen argues that, contrary to petitioners' claims, the Department is not required to utilize the highest non-aberrant margin from a respondent's sales for respondents who comply with the Department's information requests, but provide information which is incomplete or inaccurate in some regard. Thyssen argues that in *National Steel* the Court affirmed the Department's decision to apply respondents' weighted-average margin as BIA where respondent fully cooperated in the investigation and the misreporting was limited in nature. Thyssen argues that the Department's choice of BIA in its preliminary results was identical to that utilized in *Antifriction Bearings From Germany,* 56 FR at 31705.

Thyssen also argues that petitioners mistakenly presume that additional, undiscovered errors exist in Thyssen's database. Thyssen notes that it provided clerical error corrections to the Department, and the Department did additional spot checks at verification confirming errors had been corrected and were limited to isolated sales as reported by Thyssen. Thyssen concludes that the Department's use of a benign BIA would not encourage a future respondent to selectively report information.

Department's Position: As we determined in the preliminary results, Thyssen's revised database did contain unauthorized changes and other unexplained problems, but the sales affected were minimal in quantity relative to the size of the entire data base. As a result, the Department did not apply ''the most adverse partial BIA'' to such observations, but chose instead to apply Thyssen's weighted-average margin from the original investigation. Contrary to the position taken by the petitioners, this approach was approved by the CIT in *National Steel. See also Usinor Sacilor* v. *United States,* 872 F.Supp. 1000, 1007 (CIT 1994). At the same time, we do not consider this rate to be neutral, as argued by petitioners. It is considerably higher than the rate assigned to most of Thyssen's sales during this review which are based on the company's own data.

Comment 18: Petitioners argue that the Department should multiply the total volume of the BIA sales by the BIA rate to calculate the total BIA margin, then combine the resulting BIA margin with the total dumping margin calculated for the other sales to arrive at the weighted-average dumping margin. Petitioners argue that contrary to its normal practice, the Department incorrectly used the value of most of the BIA sales in the calculation of the weighted-average dumping margin. That sales information, petitioners note, is inherently unreliable, given that they are BIA sales, and reduces the dumping margin.

Thyssen acknowledges that the Department could use either methodology, assuming the use of BIA was appropriate. Thyssen argues, however, that use of the price information in the calculation of the weighted-average margin constitutes the most reasonable method because there were not price-related errors in the BIA sales in question.

Department's Position: We agree with petitioner. We have decided to calculate the overall margin for the final determination by weight-averaging the non-BIA and BIA margins by quantity alone because that is the Department's normal practice. Moreover, we note that, contrary to Thyssen's assertions, a few of the BIA observations in question did involve unauthorized changes in price.

Comment 19: Thyssen argues that the Department's resort to BIA because of clerical errors or arguably incomplete analyses contained in summary worksheets presented at the commencement of the U.S. sales verification constitutes ''a clear abuse of administrative discretion.'' Thyssen contends that the CIT has held that the DOC has abused its discretion in the past by rejecting a respondent's post preliminary determination submission as untimely. *See Usinor Sacilor* v. *United States,* 872 F.Supp. 1000, 1008 (CIT 1994) (*Usinor Sacilor*). Thyssen cites the CIT decision in *RHP Bearings* v. *United States,* 875 F.Supp. 854, 857 (CIT 1995) (*RHP Bearings*) that ''[a]n error, although untimely filed, is eligible for correction if the error is obvious from an examination of the administrative record which is before Commerce at the time of the preliminary results and the newly submitted information is obviously correct.'' Thyssen also cites *Brother Industries, Ltd.* v. *United States,* 771 F. Supp. 374, 384 (CIT 1991) (*Brother*), wherein the CIT ordered the Department to correct a respondent's clerical error, which respondent had brought to the Department's attention prior to publication of the preliminary results in an administrative review.

Thyssen claims that these cases demonstrate that the Department's resort to BIA was inappropriate. Thyssen argues that all of the errors in question consisted of clerical errors in summary worksheets, the correct data were reported in its computer database, and the clerical errors were brought to the Department's attention immediately upon discovery and prior to publication of the preliminary results.

Petitioners counter that, as the Department and Thyssen have both recognized, the information provided by Thyssen at and after verification was clearly erroneous and incomplete. Petitioners also argue that the erroneous information provided by Thyssen after verification did affect the veracity of the database as a whole. Petitioners argue that since the majority of errors were not identified until after verification, corrections made to the data base after verification obviously were not verified by the Department. Petitioners state that Thyssen did not identify the errors made in its submissions, supplying corrections only after petitioners had identified them, and that Thyssen's first attempt at clarification, the June 13, 1995, submission, included additional erroneous information. Petitioners assert that isolated verification of so-called corrected information does not negate the pervasive errors throughout groups of sales within Thyssen's database, and that a worksheet indicating an invoice ''change'' does not constitute sufficient notice to the Department because it does not identify the type or number of ''changes'' made to these invoices.

Petitioners add that it is not the Department's duty or obligation to

correct a respondent's errors. *See NSK Ltd.* v. *United States*, 825 F. Supp. 315, 319 (CIT 1993); *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews*, 59 FR 42805, 42812 (August 19, 1994). Petitioners contend that Thyssen has failed to satisfy its burden of providing reliable information. Petitioners explain that the various cases cited by Thyssen do not proscribe the application of BIA in the circumstances of this proceeding.

Department's Position: We disagree with Thyssen's assertion that the Department's use of BIA was inappropriate. Thyssen failed to make changes it proposed at verification which the Department had authorized. Thyssen also made changes which the Department did not authorize. This called into question the accuracy of the information reported for those observations. Thyssen was given the opportunity to explain how the changes in its final tape submission reflected the changes authorized by the Department's May 15, 1995, and May 17, 1995, memoranda to the file. Where Thyssen's explanation was not satisfactory, BIA was applied, as described elsewhere in this notice, in the preliminary notice, and the Department's analysis memoranda.

Furthermore, we agree with petitioners that the cases cited by Thyssen do not require a different outcome. For example, in *Usinor Sacilor*, the Court found the Department had abused its discretion by rejecting a post-preliminary results submission from the respondent. A controlling consideration for the Court, however, was that the Department's questionnaire had been misleading, which is not the case here. In *RHP Bearings*, also cited by Thyssen, the Court emphasized that it may be appropriate to correct respondent's errors if the errors are obvious from the record prior to the preliminary results and the new information is obviously correct. Thyssen's errors were neither obvious nor was the ''newly submitted information'' correct.

Finally, *Brother* is distinguishable from the current situation as well. There, the Court only required the Department to consider respondent's revised data because it was ''clerical'' in nature and because the Court was ordering remand on other issues. The Court stressed that its decision should not be construed as undermining the Department's authority to disregard untimely information. *Brother*, 771 F.Supp. at 384. In Thyssen's case, most of the information was provided after verification and none of Thyssen's unauthorized changes could be verified by the Department. Indeed, as petitioners argue, in *Brother* the Court emphasized the need for proper analysis and verification for such information, stating that the statute may require that inadequate submissions be corrected if received in time to permit proper analysis and verification of the information concerned. Such was not the case here.

Comment 20: Thyssen provided information at the beginning of the U.S. verification to correct sales that it stated had been reported twice in its U.S. database. The Department determined that Thyssen's efforts to correct the problem involving the ''duplicates'' at verification and in its final tape submission were unsatisfactory. Accordingly, the preliminary results reflected a BIA margin for the total quantity of steel in any of the invoices listed by Thyssen as ''duplicates'' and not appearing in its final tape submission.

Petitioners contend that the Department should assign a BIA margin to the total volume of the duplicate U.S. sales deleted by Thyssen from its U.S. market database. Petitioners argue that this amount is handwritten on Thyssen's June 13, 1995, submission, one of Thyssen's submissions intended to explain changes reflected in Thyssen's final tape submission.

Thyssen asserts that petitioners have ignored the methodology used by the Department. Thyssen argues that, once the decision was made to use BIA in this situation, the Department cannot accept post-verification corrections which were adverse to Thyssen, while at the same time, rejecting all other corrections as sufficiently unreliable to justify the use of BIA.

Thyssen argues that the Department improperly applied BIA to U.S. invoices identified by Thyssen at verification as duplicates. Thyssen argues that it provided the list to the Department prior to verification, it advised the Department of clerical errors contained in the list, and it explained the reason for the discrepancies.

Department's Position: We disagree with Thyssen, and have continued to apply BIA in this situation. The numerous errors in Thyssen's proposed deletions call into question whether or not any of the invoices in question should actually have been deleted. In the preliminary results, we inadvertently failed to increase the U.S. sales database by the quantities reported for any of the invoices listed in the ''deletion of alleged duplicates'' section of the relevant verification exhibit that were deleted in Thyssen's final tape submission; these quantities could very well have reflected distinct, unduplicated sales. The actual invoice and quantity information is included in the Department's December 12, 1995, Final Analysis Memorandum from Steve Bezirganian to the File (December 12, 1995, analysis memorandum). We have corrected this error in these final results.

We agree with Thyssen that it would be inappropriate to base the quantity to which BIA is applied upon the amount cited by petitioners. We were unable to determine how the handwritten number to which petitioners allude was calculated. Therefore, because we have no basis from which to conclude that the handwritten number represents the total quantity for the deleted invoices, we have not used that amount.

Comment 21: Petitioners argue that the Department should ensure that the BIA dataset it creates contains all of the invoices for which a BIA margin is to be used. For example, the Department stated in its June 16, 1995, memorandum that its preliminary results reflected the use of a BIA margin for sales to which Thyssen made unauthorized changes in quantity and/or price in its last tape submission. The Department applied BIA in the preliminary results to four such ''quantity/price'' observations because they reflected unauthorized price and/or quantity changes for these observations. Petitioners argue that the Department failed to include three invoices containing similar unauthorized changes to quantity and/or price. Petitioners also argue that the Department inadvertently left out of its BIA programming one of the four quantity/price invoices by adding an extra zero to the invoice number in its programming.

Petitioners also argue that the Department inadvertently did not include three Richburg Division invoices in its BIA list because the spaces indicated in these invoice numbers were not reported by Thyssen in the Sales Verification exhibit in question.

Thyssen responds that for the first quantity/price invoice cited by petitioners, the change in quantity was minimal and it was explained by Thyssen. Thyssen notes that the invoice contained three separate lines, and therefore is divided into three distinct U.S. sales observations. Thyssen argues that the change in question only affected one line, so any BIA should only be applied to the observation reflecting that line of the invoice.

For the second quantity/price invoice cited by petitioners, left out of the Department's BIA list because of clerical

error, Thyssen argues that BIA is improper because the errors, for this and other Richburg sales, related solely to the summary worksheet provided to the Department at verification and did not affect the veracity of the data submitted in the database. Thyssen notes that the Department did not find an error in quantity during the sales trace of one observation that appeared as an addition on the summary list, and that the quantity observed for another sales trace observation corresponded to the corrected quantity in Thyssen's June 13, 1995, submission. Petitioners counter by noting that examples of sales with correct quantity information do not negate the pervasive errors throughout the whole group of sales in question.

For the third quantity/price invoice cited by petitioners, Thyssen argues that it did report the changes in U.S. Sales Verification Exhibit 24A1 and 24A3.

Thyssen claims that it also identified at verification as requiring correction the four quantity/price observations to which the Department chose to apply BIA in its preliminary results, two of which were listed in its column of changes entitled ''Deletion of Duplicate Invoices.'' The other two were listed in the column of changes entitled ''Misc. Corrections.'' Petitioners counter that a worksheet indicating an invoice ''change'' does not constitute sufficient notice to the Department because it does not identify the type or number of ''changes'' made to these invoices.

Regarding the quantity/price invoice for which the Department added an extra zero, Thyssen argues that it had identified this invoice as a ''change,'' and provided the Department with corrected information immediately upon discovery of the summary worksheet error.

Regarding the other three Richburg invoices which petitioner argues should be included in the BIA dataset, Thyssen again argues that BIA is not appropriate for the sales in question because the errors related solely to the summary worksheet provided to the Department at verification.

Thyssen concludes that the Department should treat Thyssen's clerical mistakes in the same manner as petitioners have suggested the Department should correct the Department's own clerical errors. Thyssen argues that the limited burden of correcting the mistakes is far outweighed by the preference for accuracy in final dumping determinations, and that it would be both paradoxical and a clear abuse of discretion for the Department to punish Thyssen for its attempt to create as error-free and as accurate a margin calculation as possible.

Department's Position: The Department is not applying BIA to the first quantity/price invoice in question. That invoice is referred to on page 9 of the U.S. Sales Verification report as having an error in reported actual weight. The Department did not instruct Thyssen to make the correction to that invoice in its post-verification database; however, applying BIA to the invoice in question because Thyssen unilaterally corrected an error amounting to roughly two-tenths of one percent that the Department identified at verification, would be inappropriate.

The Department is applying BIA to the second quantity/price invoice in question, as it did for other Richburg Division invoices which Thyssen attempted to correct at U.S. verification. As noted in the Department's June 16, 1995, analysis memorandum, Thyssen provided a number of changes to the U.S. sales database with respect to sales from Richburg, but some of these changes differed from those provided at verification; differences included incorrect quantities, deletion of non-existing invoices or portions thereof, and incorrect shipping dates. The numerous errors and inconsistencies in Thyssen's presentation of changes involving Richburg sales created doubts about the observations in question. The errors in Thyssen's proposed changes only became apparent after verification, when Thyssen submitted its post-verification database on May 22, 1995. Furthermore, the fact that the verification report seems to indicate that a sale was reported accurately is not dispositive, and we agree with petitioners that the numerous errors called into question the reliability of the Richburg observations as a whole.

Regarding the third quantity/price invoice in question, the Department agrees with Thyssen that it provided the appropriate changes to the Department at verification in U.S. Sales Verification Exhibit 24A1 and 24A3.

We are applying BIA to the four quantity/price observations, consistent with our preliminary results, because there was no indication in the correction exhibits provided by Thyssen at the U.S. verification that quantity and/or price of these observations would be changed in Thyssen's final tape submission. These observations differ from the first quantity/price change observation cited by petitioners as inappropriately left out of the Department's BIA dataset. The latter observation involved an extremely small error precisely identified during a sales trace at verification, while the former four observations involve previously unidentified and unexplained changes to quantity and/or price. We note that for one of these four invoices, as noted by petitioners, we inadvertently included an extra zero in the invoice number, and have corrected this error.

Regarding the other three Richburg invoices cited by petitioners, we are including these in the BIA dataset, in accordance with the explanation above regarding the Richburg observation changes presented at verification.

Thyssen's general argument that the burden to correct its mistakes is limited is unfounded. The mistakes in question are of such nature that the accuracy of the observations involved is called into question. It is unclear whether the ''corrected'' data actually are correct, and the Department cannot be expected to take the steps necessary (*i.e.*, an additional verification) to make that determination. Thyssen had numerous opportunities to correct its mistakes. One such opportunity was at the beginning of verification, when Thyssen did in fact provide lengthy lists of changes. Review of these corrections proved very time consuming, particularly when errors in the ''corrections'' were discovered. Any changes that were not authorized by the Department prior to Thyssen's final tape submission, or that were not clearly explained as resulting from such an authorized change, were rightfully subject to adverse BIA.

Comment 22: Thyssen argues that the Department incorrectly applied a 16.56 percent BIA margin to all U.S. observations relating to several shipments of steel covered by a single order. Thyssen contends that the Department believes the data provided in Thyssen's post-verification database submission did not reflect the changes provided to the Department at verification. Those changes involved Thyssen's attempt to update its database to account for what previously had been unshipped balances. Thyssen contends that, in its June 13, 1995, submission, it advised the Department of a typographical error in the relevant correction sheet provided at verification, and that the actual quantity shipped and the actual unshipped balances were correctly reported in the United States database.

Petitioners argue that the Department properly applied BIA to this order, for which information was inaccurately reported.

Department's Position: We disagree with Thyssen. After reviewing these data issues at verification, and after allowing Thyssen to provide a post-verification submission to clarify

changes to its database. We have determined that these errors are not fully explained by the typographical error identified by Thyssen. It is still not clear how each of the invoice numbers and shipment quantities listed under the order in question relate to each other and to specific observations in Thyssen's post-verification database submitted on May 22, 1995. Consequently, we have continued to apply a margin based on BIA to the U.S. observations relating to the order in question.

Comment 23: Petitioners argue that the Department, in its preliminary results, improperly treated Thyssen's reported ''trader discounts'' granted to trading companies for sales made to customers that were end-users. Petitioners argue that, since the trading company never receives title to or takes possession of the merchandise, these deductions should be treated as a commission expense to Thyssen, rather than as a price discount. Moreover, given that the trading companies serve only as facilitators, there is no evidence that the prices charged the end-user customers in these transactions are altered or affected by the commission.

Citing *Industrial Phosphoric Acid from Israel,* 52 FR 25440, 25442 (July 7, 1987), Thyssen responds that the reduction in price on these end-user sales should properly be considered discounts granted to the trading companies. Respondent acknowledges initially having characterized these as commissions, but argues that it later clarified that they are discounts because the trading company is invoiced, it is responsible for paying Thyssen, and it bears the risk of loss if the customer does not pay. Thyssen argues that the trader discount is a reduction on the invoice of the invoice amount, for which no separate payment by TSAG is made, and that it reduces the net price received by TSAG, since it is a deduction from the amount paid by the trading company. Thyssen argues further that the Department noted, in its July 20, 1995 memorandum, that it verified that if the traders were invoiced and responsible for payment, they did in fact receive the ''discount.''

Department's Position: Generally speaking, a commission is a payment to a sales representative for engaging in sales activity, normally on behalf of the seller but occasionally on behalf of the customer. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10,900, 10,914 (Feb. 28, 1995); *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the Peoples Republic of China,* 58 FR 7537, 7543 (Feb. 8, 1993)(*Sulfur Dyes*). A discount is a reduction in price to a customer. *See Sulfur Dyes From the PRC.* Therefore, the key question here is whether there was one transaction between Thyssen and the ultimate purchaser in which the trading companies acted as Thyssen's sales representatives for a commission; or whether there were two transactions, one in which the trading companies bought from Thyssen and received a discount on the price for that initial sale and the ultimate purchaser then bought from the trading companies.

In addressing this question, we looked first to the manner in which Thyssen reported its sales. Significantly, Thyssen identified the transactions involving the trading companies as sales made by Thyssen itself to the ultimate customer. This indicates that in Thyssen's view, there were no separate sales to the trading companies; instead, the first and only sale was to the ultimate purchaser. Thus, the role of the trading companies must have been that of a commissionnaire. Thyssen's claim that the trading companies are intermediate purchasers who receive a price discount is inconsistent with its reporting of sales to the ultimate customers.

Thyssen's acknowledgement that it conducted the price negotiations with the ultimate customers also supports the conclusion that there was a single sale between Thyssen and the ultimate customer. In addition, as petitioners stressed, Thyssen originally referred to the amounts in question as ''commissions,'' then used the term ''discount'' after the Department requested supplemental information on the commissions.

On the other hand, information in the record appears to indicate that Thyssen invoices the trading companies, and the trading companies invoice the ultimate customer. This suggests the presence of two transactions. Moreover, the Department did verify that the actual invoices to the trading companies referred to the amounts in question as discounts. Although there is conflicting evidence on the record, it is most reasonable to treat this issue consistently with Thyssen's reporting of its home market sales. Accordingly, we have revised the preliminary results in this respect and have treated these deductions as commissions.

Comment 24: Petitioners contend that the Department should deny Thyssen's claimed indirect selling expense adjustment for home market technical services expenses. The home market verification report describes the technical services expenses claimed by Thyssen as consisting primarily of research and development (R&D), which petitioners argue are generally considered production expenses rather than selling expenses. Petitioners conclude that these R&D expenses cannot be tied directly to sales of the subject merchandise, and so do not qualify as technical services expenses.

Thyssen argues that the Department noted in its Home Market Sales Verification at 21 that the technical services expenses claimed by Thyssen are related to customer-specific testing (not to be confused with the R&D expenses claimed as indirect expenses), and that, as such, these expenses are product-specific.

Department's Position: We disagree in part with petitioners. Thyssen's January 17, 1995, submission, at page 56, and Exhibit 31 of that submission describe the technical services identified on page 16 of Thyssen's November 21, 1994, Section IV submission. Exhibit 31 depicts the costs of assorted functions, including the provision of advice regarding potential new products and adjustments in production processes. However, home market verification report Exhibit XXI indicates that the cost center from which the costs were derived was identified as ''material complaints.'' As the verification report confirms, the category material complaints pertains to testing costs related to warranty claims. Because the information in Exhibit XXI referring specifically to R&D is not reflected in the technical services expense data reported by Thyssen, we reject petitioners' assertion that these data include R&D costs.

However, we do agree with petitioners that the expenses in question cannot be tied to subject merchandise, and we note that Thyssen's allocation methodology, as presented at verification, was deficient. Verification Report Exhibit XXI indicates that Thyssen derived its reported DM/ton expense by dividing total technical services expenses by shipments in Germany. Thyssen's total expenses, as is clear from the exhibit, include those for all cold-rolled material, including that which was further processed out of the scope of this review. Thyssen's total expenses also include those for merchandise produced for all customers, not just those in Germany. Consequently, we have reduced this expense amount by that amount which we estimate pertains to non-covered merchandise. *See* the Department's

December 12, 1995, analysis memorandum.

Comment 25: Petitioners assert that the interest rate used by the Department to calculate Thyssen's home market credit and inventory carrying cost adjustments should be based solely upon the company's short-term borrowings from unrelated parties. Petitioners note that the Department has recognized that expenses paid to related parties in the home market may sometimes be priced above the market rate for those expenditures, and, in such instances, the market rate of interest should be employed in the calculation of the adjustments to home market price. *See Color Picture Tubes from Japan; Final Results of Antidumping Duty Administrative Review*, 55 FR 37915, 37922–23 (Sept. 14, 1990) *(Color Picture Tubes from Japan); High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final determination; Recission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32393 (July 16, 1991)(*Flat Panel Displays*). Petitioners suggest that the market ''expense'' of Thyssen's borrowings should be determined by using interest rates of Thyssen's borrowings from unrelated parties.

According to Thyssen, the information on the record confirms that the interest rates charged for intra-company loans were consistent with other loans. Thyssen notes that it was the nature of the loan, rather than the relationship of the lender to Thyssen, which was the critical factor in determining Thyssen's interest rates during the POR.

Thyssen also argues that, in the fair value investigation, the Department rejected a similar claim by petitioners that the Department should ignore Thyssen's related company borrowings, where differences in rates were not significant. *Steel from Germany,* 58 FR at 37149. Thyssen adds that in *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695, 13705 (April 17, 1992), the Department rejected a respondent's attempt to disregard a related-party loan, stating that ''there was no evidence that the interest rate on the related-party loan did not reflect market interest rates.''

Department's Position: We disagree with petitioners. As in the original investigation, *Steel from Germany* at 37149, we have determined that information on the record indicates that the intracompany loans in question were made at what could be considered market rates.

The situation here differs from that in both determinations relied upon by petitioners. In *Color Picture Tubes from Japan,* the Department determined at verification that the related party charged the respondent more for freight than the related party was charged by the trading company that actually delivered the merchandise. In *Flat Panel Displays from Japan,* the Department found that, rather than being a market price, the price charged by the related party was established for respondent's internal bookkeeping purposes only. By contrast, in the present case, neither the information in Exhibit XIV of the Home Market Sales Verification, which provides interest rates on loans of varying duration from related and unrelated parties, nor the Department's May 2, 1995, Home Market Sales Verification Report, support the contention that interest rates on concurrent loans of similar duration provided to Thyssen by related parties differed in any meaningful way from those offered by unrelated parties.

However, we note that in the preliminary results we did not account for the fact that Thyssen incorrectly reported home market credit expenses that were calculated based on a price that does not net out discounts that are not on the invoice. While Thyssen has stated that it pays these discounts every quarter, there is no information on the record indicating that Thyssen pays the customers such ''discounts'' for a particular sale before the customer pays for the merchandise. Thyssen confirmed on page 13 of its June 23, 1995, submission that it ''does not incur any financing expenses from date of shipment to date of payment for these out of invoice discounts.'' Consequently, we have adjusted home market credit expenses for the final results and are calculating this expense net of discounts not on the invoice. *See* the Department's December 12, 1995, analysis memorandum.

Comment 26: Petitioners argue that the Department should exclude the R&D and general and administrative (G&A) costs from the miscellaneous indirect selling expense variable amounts claimed by Thyssen. Petitioners reiterate that expenses pertaining to R&D are generally not selling expenses, but, rather, production costs, and that such expenses should be classified as non-sales-related general and administrative expenses. Petitioners also argue that none of the various G&A expenses claimed by Thyssen qualify as indirect selling expenses, since they are not associated with selling activities. Finally, petitioners argue that should the Department decide to include Thyssen's claimed R&D in the indirect selling expenses deducted from USP and FMV, it must correct the allocation of those R&D expenses to the home and U.S. markets.

Thyssen responds that the record clearly establishes that it correctly included these expenses in its home market indirect selling expenses. Thyssen argues that the R&D expenses categorized as indirect selling expenses include items related to selling, not production activities. *See Antifriction Bearings from France,* 60 FR at 10920. Thyssen argues that the same is true for the various G&A expenses included as indirect selling expenses. Finally, Thyssen argues that the Department confirmed at verification that the R&D expenses in question had been allocated to each market on the identical basis as were selling expenses, verified by the DOC.

Department's Position: We disagree with petitioners regarding G&A expenses. Our verification indicated that the expenses in question were indirect selling expenses. The type of costs which Thyssen listed include meals and transportation for Thyssen's customers. These are costs which we reasonably consider to be selling expenses.

However, petitioners are correct that the Department does not normally consider R&D expenses to be costs associated with selling the merchandise. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28415 (June 24, 1992). There are exceptions to this policy. *See Antifriction Bearings From France,* 60 FR at 10920. However, we have determined that Thyssen has not shown that the R&D costs in question constitute selling expenses. We have therefore adjusted Thyssen's miscellaneous home market indirect selling expense variable to reflect this finding. *See* the Department's December 12, 1995, analysis memorandum.

Comment 27: Petitioners argue that Thyssen's reported home market warranty expenses for the POR are aberrational and that the Department should instead use a weighted-average for these indirect selling expenses based on Thyssen's reported data for calendar years 1990 and 1991, and fiscal years 1991/92, 1992/93, and 1993/94. Petitioners cite *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review,* 56 FR 38417, 38421 (Aug. 13, 1991)*(Television Receivers from Japan);* and *Final*

Determination of Sales of Less Than Fair Value: Certain Carbon And Alloy Steel Wire Rod from Canada, 59 FR 18791, 18795–6 (April 20, 1994) (*Steel Wire Rod from Canada*).

Petitioners argue that for U.S. warranty expenses, the Department should employ BIA in place of Thyssen's claimed adjustment. Petitioners argue that for both its automotive and non-automotive divisions Thyssen provided U.S. warranty expense information which pertains to products well beyond the scope of this review, and that Thyssen's use of total warranty expenses over total sales does not conform to the CIT's ruling that the Department must ''develop a methodology which removes technical services and warranty expenses incurred on sales of out of scope merchandise.'' *Federal-Mogul Corp.* v. *United States,* 862 F. Supp. 384, 406–07 (CIT 1994). Petitioners also argue that the reliability of Thyssen's reported warranty expenses are further undermined by Thyssen's failure to provide information on its ''historical experience of warranty/guarantee expenses for U.S. sales in each of the five years preceding the period of review,'' as requested by the Department.

Petitioners argue that the Department should recalculate Thyssen's per-unit U.S. warranty expense adjustment by dividing the total warranty expense amounts reported by Thyssen for fiscal years 1992/93 and 1993/94, by the total volume of subject merchandise sold by Thyssen in the U.S. market in each of those fiscal years, respectively. Furthermore, petitioners argue that, because Thyssen did not provide information on its warranty experience for the five years preceding the POR, the Department should apply the higher of the two fiscal year amounts as BIA to all U.S. sales.

Petitioners conclude that, should the Department use the reported home market warranty expenses in question without weight-averaging, at a minimum it must also use the U.S. warranty expense data from the same exhibit.

Thyssen responds that the Department generally uses warranty expenses incurred during the POR, and will only resort to historical experience in those instances in which: (1) a respondent is not able to demonstrate a relationship between POR sales and its warranty expense claim, by tying actual warranty expenses to POR sales; and (2) a historical average would be a more representative proxy of eventual warranty expenses on POR sales than warranty expenses actually incurred during the review period. *See Steel Wire Rod from Canada,* 59 FR at 18795–96, and *Television Receivers from Japan,* 56 FR at 38421–22. Thyssen argues that the Department properly relied upon Thyssen's home market warranty expenses incurred in fiscal year 1993/94, and that these expenses were only slightly higher than those for fiscal year 1992/93 on either an absolute or a percentage [of sales] basis. Thyssen also argues that, for the last three fiscal years, Thyssen's home market warranty expenses reflected a relatively steady aggregate amount.

Regarding its U.S. warranty expenses, Thyssen argues that it did in fact provide adequate historical information. It also argues that *Federal Mogul* does not preclude the Department from accepting the warranty expense allocation methodology presented by Thyssen, and that the Department accepted a similar methodology in *Antifriction Bearings from France,* 60 FR at 10910. Thyssen argues that even petitioners acknowledge that the Department verified both the amount of U.S. warranty expenses incurred during the POR and the total value of sales upon which warranty expenses were allocated. Thyssen argues that, contrary to petitioners' claim, the Department never explicitly instructed Thyssen to report only those warranty expenses applicable to cold-rolled steel, but rather requested that it do so or clarify why it could not do so; and the Department confirmed in its U.S. sales verification report at 12–14 that the necessary records were not maintained, either by supplier or product type.

Thyssen argues that petitioners' suggestion that the Department should apply 100 percent of Thyssen's verified warranty expenses to cold-rolled shipments must be rejected, since the Department has confirmed that the expenses relate to all products, and the Department cannot penalize a respondent for failing to maintain business records in a particular manner or for utilizing an allocation method which subsequently may be rejected by the Department. *See, e.g., Industrial Quimica del Nalon, S.A.* v. *United States,* 15 CIT 240, 244 (CIT 1991).

Finally, Thyssen also argues that petitioners' alternative of applying a deutsche marks per metric ton warranty expense to Thyssen's U.S. shipments based on a home market sales verification exhibit is flawed, since the document upon which petitioners rely does not include data for fiscal year 1992/93. Thyssen argues that if the Department does decide to use BIA for U.S. warranty expenses, it should rely on data utilized in its fair value investigation, which were purportedly accepted by petitioners and verified by the Department from both a historical and actual perspective.

Department's Position: We disagree with petitioners' arguments that we should use weighted-averaged expenses calculated for earlier years because Thyssen's reported home market warranty expenses were aberrational. As noted in *Television Receivers from Japan,* the Department generally uses warranty expenses incurred during the POR. As the Department's May 2, 1995, Home Market Sales Verification Report indicates, there were no problems observed with Thyssen's reported home market warranty expenses. Various factors may lead to some variation in warranty expenses, and the variations in Thyssen's expenses do not appear to be abnormal.

Regarding Thyssen's reported U.S. warranty expenses, we agree with Thyssen that it would not be appropriate to apply Thyssen's total warranty expenses over total sales of subject merchandise, as suggested by petitioners. Given Thyssen's substantial U.S. sales of non-subject merchandise relative to its U.S. sales of subject merchandise, such an approach would be inappropriately adverse.

However, Thyssen did submit, as noted by petitioners, warranty expenses for U.S. shipments of cold-rolled flat products made during fiscal year 1993/94. The data for 1993/94 U.S. shipments, contained in Home Market Verification Exhibit XIX, were reviewed at the home market verification, and found to be reasonable. Thus, we are able to use this figure for calculating the adjustment, a methodology which is consistent with the CIT's directive in *Federal Mogul.* Thyssen did not submit similar data in a timely fashion for fiscal year 1992/93. However, there is no indication on the record that Thyssen's 1992/93 fiscal year warranty expenses for U.S. sales of subject merchandise were any higher or lower than those for fiscal year 1993/94. Therefore, we have used the 1993/94 data for all of Thyssen's U.S. sales, regardless of fiscal year.

Comment 28: Petitioners argue that the Department should reject all of the cash discount information supplied by Thyssen and employ instead, as BIA, an *ad valorem* cash discount for all U.S. sales based on the highest discount granted to a U.S. customer. Petitioners argue that the Department recognized in its May 11, 1995, memorandum from Richard O. Weible to Roland L. MacDonald (May 11, 1995, discount memorandum), that the cash discount information provided by Thyssen is

highly unreliable and subject to serious deficiencies, and that it is possible that there are other inaccuracies in the U.S. discount data that remain undetected. Petitioners argue that the fact that the errors found at verification were limited to certain customers does not indicate that such errors were not more widespread, but rather suggests that the contrary may be true, since the errors noted were self-produced by Thyssen. Furthermore, petitioners argue that Thyssen has failed to explain why at times its customers took the discount when eligible, at other times they did not take the discount when eligible, and at still other times they took the discount when they were technically not eligible.

Thyssen argues that the Department's verification confirmed that Thyssen had properly reported its cash discounts for all of its U.S. customers other than those specifically referred to in the Department's May 11, 1995 discount memorandum. Thyssen also argues that the Department verified the total discounts granted by TINC as a percentage of sales. Consequently, Thyssen argues that the Department must reject petitioners' call for use of BIA beyond that applied for U.S. cash discounts in the preliminary results.

Department's Position: We disagree with petitioners. Our review of U.S. discounts at verification included the pre-selected and surprise sales trace observations, as well as a thorough review of Thyssen's changes to its discounts, which were proposed in a timely manner. As noted in the Department's July 20, 1995, memorandum at 5, the only problems noted were limited to a few specific customers, and discounts reported for other customers were found to be accurate. *See also* May 11, 1995, discount memorandum. The only relevant issue is the total amount of the discounts, which has been determined as noted above. The reasons why a discount was offered or accepted for specific transactions is irrelevant to this inquiry.

Comment 29: Petitioners argue that the Department should deny Thyssen's attempt to include interest income in the calculation of its U.S. short-term interest rate. Petitioners argue that the calculation of a respondent's imputed credit and inventory carrying costs should be based on the short-term interest rate either actually or potentially incurred by the respondent in financing its accounts receivable. For purposes of calculating its imputed credit and inventory carrying costs, Thyssen's borrowing costs during the POR are fully and accurately represented by its weighted-average gross interest expense. Petitioners argue that the Department should base Thyssen's U.S. imputed credit and inventory carrying cost amounts upon the short-term interest rates reported by the company prior to verification.

Thyssen argues that it properly reduced its borrowing rate to account for short-term interest income in order to avoid a double deduction of interest resulting from the fact that Thyssen included an amount equal to TINC's allocated share of the interest expense of Thyssen AG in its U.S. indirect selling expense deduction from USP. Thyssen argues that a similar adjustment was made to avoid double-counting in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from West Germany,* 56 FR 31692, 31721 (July 11, 1991). Because the Department's questionnaire does not provide for this particular deduction, if interest income is not deducted from interest paid, interest expenses deducted from USP will be greater than Thyssen's actual borrowing costs for the POR.

Department's Position: We have denied Thyssen's claim for an adjustment to its borrowing rate to offset short-term interest income against the deduction of credit expenses and inventory carrying costs from U.S. price. The Department does not normally allow an offset of this type outside the context of a COP or CV calculation. As explained in Comment 7, in a COP or CV calculation, the Department does generally offset interest expenses for short-term interest income earned through a company's ''general operations,'' which excludes unrelated and long-term interest income such as that earned from investment activities. *NTN Bearing Corp.,* Slip Op. 95–165 at 33; *Timken Co.,* 852 F.Supp. at 1048.

By contrast, in a sales calculation, respondents must demonstrate a more direct relationship between the interest income and the sales under review in order to qualify for an offsetting adjustment.

See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review, 59 FR 1374, 1378 (January 10, 1994). In accordance with this standard, the Department has offset interest income actually shown to reduce the respondent's cost of extending credit to its customers. For instance, the Department granted an offset for interest earned on a respondent's sales of the subject merchandise pursuant to a special arrangement with another party. *Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 60 FR 42835, 42838 (August 17, 1995); *see also Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 57 FR 3167, 3178 (January 28, 1992). The Department has also permitted an offset for interest earned from pre-shipment advance money, *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle From Japan,* 60 FR 16608, 16615 (March 31, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion Resistant Carbon Steel Flat Products From Japan,* 58 FR 37154, 37173 (July 9, 1993) (*Steel From Japan*), and for interest earned on late payments. *Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan,* 53 FR 12552, 12571 (April 15, 1988). The Department has also determined that pre-payment funds for which a party claims to have received interest income may not be used to finance ongoing operations. *Steel From Japan* at 37173.

Thyssen did not claim the offsetting adjustment for interest income until verification. Thus, the Department was never able to investigate the basis of its claim. The verification report, which contains the only explanation regarding the funds, states only that Thyssen received income ''attributed to interest that was part of a legal settlement.'' U.S. Verification Report at 10. An accompanying verification exhibit provides some detail as to the origin of the interest income, in chart form, but contains no indication that the funds were derived from sales of the subject merchandise. *Id.* at Exhibit 19.

Based on the record evidence we are unable to determine whether the interest income claimed as an offset was associated with actual sales of the subject merchandise. It was the responsibility of Thyssen to demonstrate entitlement to this adjustment to U.S. price and we find that Thyssen has failed to meet the Department's standard, as set forth above. We have, therefore, revised our preliminary results to eliminate the offset for Thyssen's claimed interest income.

Comment 30: Petitioners argue that the Department should adhere to its decision not to allow Thyssen's claimed currency hedging adjustment. Petitioners agree with the Department's

determination that the veracity of the currency hedging gain information is called into question by unexplained changes involving this information in Thyssen's post-verification database. Petitioners also argue that the adjustment should be denied on legal grounds. Petitioners cite the CIT's decision involving this adjustment in the underlying investigation, in which the court was ''not persuaded that the law presently permits any adjustment in the computation of dumping margins for either gains or losses which result from the hedging of currencies.'' *Thyssen Stahl AG* v. *United States,* 886 F.Supp. 23, 32 (CIT 1995). Petitioners conclude that the accuracy of Thyssen's reported data for this adjustment is largely irrelevant since the CIT has ruled expressly on this issue.

Thyssen responds that the Department improperly denied its currency hedging adjustment. Thyssen argues that the Department verified that Thyssen's currency exchange contracts were tied directly to its U.S. sales. Regarding the variations in the adjustment, Thyssen also points to its previous explanation that ''a change in any field used in the formula to calculate the exchange gain * * * changes the exchange gain.''

Thyssen also argues that the CIT's decision in *Thyssen Stahl AG* is not final, since Thyssen has the opportunity to appeal that decision to the Court of Appeals for the Federal Circuit, and, moreover, that decision is directly contrary to *Torrington Company* v. *United States,* 832 F. Supp. 379 (CIT 1993).

Department's Position: We disagree with Thyssen. As noted in the preliminary results, Thyssen's post-verification database contained numerous unexplained and unauthorized changes in the currency exchange expense variable. While the Department recognized that this variable would change if one of many other variables changed, we were unable to reconcile all of the changes to the changes Thyssen was authorized to make in its final tape submission. Furthermore, the largest changes were clearly unauthorized by the Department, and were very much in Thyssen's favor. Consequently we are continuing to disallow this adjustment. For purposes of this review, therefore, petitioners' and Thyssen's arguments regarding the CIT's decision are moot.

Comment 31: Petitioners agree with the Department's preliminary determination that BIA was warranted for those Budd sales in the United States for which Thyssen failed to report contemporaneous home market sales. Petitioners also argue, however, that the Department should apply BIA to all of Thyssen's remaining reported Budd sales to U.S. customers and to an additional estimated quantity of Budd sales to U.S. customers which Thyssen failed to report.

Petitioners note that, contrary to Thyssen's assertions, the volume of the unreported home market sales relative to that of the Budd sales for which they were needed is irrelevant. Petitioners argue that the Department's longstanding practice is to compare each U.S. sale to the weighted-average FMV associated with all home market sales made in the ordinary course of trade within the same six-month period as the U.S. sale. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom,* 56 FR 5975, 5976 (Feb. 14, 1991). Petitioners argue that, for the Budd sales given BIA because of Thyssen's failure to report shipment dates from Germany, Thyssen failed to offer any explanation in its brief as to why those shipment dates were not provided.

Petitioners also contend that the Department should apply adverse BIA to all of the Budd sales which Thyssen did report because Thyssen did not adequately address any of the Department's questions regarding U.S. further processing by Budd. Specifically, petitioners argue that Thyssen did not describe the further manufacturing processes performed by Budd or the overhead factors or cost accounting methodology; Thyssen also failed to indicate whether manufacturing processes were performed in-house or by outside contractors, or what equipment or personnel were used.

Finally, petitioners argue that the Department should apply BIA for sales by Budd that Thyssen failed to report. Petitioners argue that the Department is required by section 751 of the Act to determine the amount of the antidumping duty by determining ''the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order.'' Petitioners provide a methodology for estimating Budd's unreported sales, and argue that the Department apply as BIA for these sales the higher of either the margin rate from the underlying investigation or the highest non-aberrant margin rate calculated for sales in this review.

Thyssen asserts that the Department improperly applied a 16.56 percent BIA margin to the 1992 Budd sales for which Thyssen did not report contemporaneous home market sales. Thyssen argues that it would be absurd to require it to report an enormous number of additional home market sales simply because a small amount of Budd sales involved requirements contracts consummated in 1992. Thyssen also argues that such a reporting burden is not appropriate given the inherent difficulty in calculating meaningful margins when comparing the home market sales price for cold rolled steel to the adjusted U.S. prices of motor vehicle component parts such as those sold by Budd. Thyssen concludes that the Department should exclude these Budd sales from the U.S. database, citing the CIT decision in *Sonco Steel Tube Div.* v. *United States,* 12 CIT 745, 748 (1988); or alternatively, the Department should apply Thyssen's weighted average margin for Budd resales, as determined in this review, citing *Nat'l Steel Corp.* v. *United States,* 870 F.Supp. 1130 (CIT 1994).

Thyssen acknowledges that the data submitted for Budd was not presented in the identical format as that submitted by TINC. But Thyssen argues that the Department accepted Budd's submission as complete, as evidenced by the fact that the Department did not advise Thyssen that additional information for Budd was required or that the manner in which Budd reported its costs failed to conform to Department reporting requirements. Thyssen argues that the information necessary for the Department's analysis was provided, and that the Department has a degree of latitude in implementing its verification procedures. Thyssen also counters petitioners' argument that the highest non-aberrant margin from this review should be applied to petitioners' estimate of unreported Budd sales. According to Thyssen, the Department never questioned Budd's interpretation of its reporting instructions, thereby precluding resort to BIA. *See, e.g., SKF USA, Inc.* v. *United States,* Slip Op. 95–85 (CIT May 8, 1995).

Finally, Thyssen argues that, contrary to petitioners' contention, the Department is not required to examine every U.S. sale made by respondents during the POR. *See, e.g., Sonco Steel,* 12 CIT at 748. The potentially unreported Budd resales, Thyssen argues, consist of merchandise which was shipped by TINC to Budd prior to the POR. Petitioners' methodology for estimating unreported Budd sales assumes that all of Budd's material costs consist of cold rolled steel exported from Germany by Thyssen, which ignores the fact that the majority of steel sold by TINC to Budd was not subject cold rolled steel, and that only a *de minimis* amount of Budd's material

costs consisted of cold rolled steel purchased from Thyssen.

Department's Position: The Budd Company, like TSAG and TINC, is wholly-owned by TAG. Thyssen reported sales in the U.S. by Budd after initially refusing to do so. However, Thyssen continued to refuse to provide the contemporaneous home market sales needed for matching to the earliest Budd sales. Because these Budd sales were made pursuant to requirements contracts, the necessary home market sales were dated in 1992. We disagreed with Thyssen's request that the Budd's 1992 U.S. sales be completely excluded from the analysis or, alternatively, assigned the weighted average margin for other Budd sales in this review. *See Preliminary Results,* 60 FR at 39356. The Department requires respondents to report contemporaneous home market sales. Thyssen failed to do so for the sales in question, which included some observations for which Thyssen had failed to report a shipment date from Germany. Consequently, an adverse BIA is appropriate for the 1992 Budd sales in question, and we have continued to apply the margin from the investigation. *See Id;* the Department's June 16, 1995, Analysis Memo from Steve Bezirganian to the File.

We disagree with petitioners' contention that the Department should assign BIA to all of those U.S. sales by Budd which Thyssen did report because of what petitioners contend was Thyssen's failure to provide sufficient answers to the Department's further manufacturing questionnaire. The Budd sale submission contained the variables needed for the Department's calculations, albeit in an unwieldy format. Moreover, the Department did not request more detailed information on Budd's sales, because they constituted a very small portion of Thyssen's total U.S. sales. For those Budd sales which were reported, the only information lacking was the contemporaneous home market sales data discussed previously.

The Department repeatedly requested that Thyssen report U.S. sales made by Budd. When Thyssen finally reported Budd sales, this reporting was incorrectly on shipments during the POR from TINC to Budd, rather than Budd sales to the first unrelated customer during the POR (or, in the case of requirements contracts between Budd and its customers, shipments from Germany during the POR). Petitioners are correct that this leaves open the possibility that Thyssen failed to report all sales by Budd.

We agree with petitioners' suggestion that the Department assume that some percentage of Budd's sales during the POR were unreported, and that we should apply BIA to these ''estimated unreported'' sales. However, applying petitioners' methodology for estimating unreported sales by Budd would grossly overestimate this possibility. Therefore, we have determined that applying BIA in the manner suggested by petitioners would be unreasonable. Instead, we have adjusted petitioners' methodology to reflect our observation that very few of TINC's sales were to Budd. Therefore, for the final results, we have calculated a different estimate of the number of tons associated with these potentially unreported Budd sales, which we have added to the data base. As BIA, we have applied the rate from the original investigation to this estimated amount. *See* the Department's December 12, 1995, analysis memorandum.

Comment 32: Petitioners argue that the Department should account for unreported post-sale warehousing for certain U.S. spot sales. Spot sales were made from existing TINC inventories, and were normally shipped immediately after the sale took place. Thyssen conceded that, in certain limited instances, its U.S. spot sales were shipped ten days or more after the reported sale date. However, Thyssen argues that it advised the Department of this possibility in its November 22, 1994, questionnaire response. Thyssen argues that the Department verified that Thyssen reported all of its warehousing costs in the warehousing expense variable which the Department, as required by law, deducted from the sales price in calculating USP.

Department's Position: The post-sale expenses to which petitioners refer constitute a small portion of the overall amount reported by Thyssen in its pre-sale warehousing expense variable. Because this post-sale expense is being deducted from U.S. price, and because this expense is very small for most sales in question, even if the Department attempted to separate it into a separate variable and chose to reclassify it as a direct selling expense, the effect upon Thyssen's final calculated margin would be negligible. Consequently, we have chosen not to make any adjustments to Thyssen's pre-sale warehousing expense variable.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period August 18, 1993, through July 31, 1994:

Manufacturer/exporter	Margin (percent)
Thyssen	5.88

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Thyssen will be the rate established above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.03 percent, the all others rate established in the final results of the first administrative review (58 FR 44170, August 19, 1993).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30784 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–815]

Certain Cold-Rolled Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by two respondents, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States during the period of review (''POR'') from August 18, 1993, through July 31, 1994.

We have preliminarily determined that sales have been made below the foreign market value (''FMV''). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (''USP'') and the FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3793 or fax (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 9, 1993, the Commerce Department published in the Federal Register (58 FR 37176) the final affirmative antidumping duty determination on certain cold-rolled carbon steel flat products from Korea, for which we published an antidumping duty order on August 19, 1993 (58 FR 44159). On August 3, 1994, the Department published the ''Notice of Opportunity to Request an Administrative Review'' of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). We received a request for an administrative review from Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union''). We initiated the administrative review on September 8, 1994 (59 FR 46391).

In a letter dated February 1, 1995, petitioners formally requested that the Department consider Union and Dongkuk Industries Co., Ltd. (''DKI''), which was not a respondent initially, as related parties and ''collapse'' them as a single producer of cold-rolled carbon steel flat products.

In accordance with section 771(13) of the Tariff Act of 1930, as amended (''the Act''), the Department, in determining whether parties are related, considers whether the alleged related party:

1. Is an agent or principal of the exporter, manufacturer, or producer;
2. Owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer or producer;
3. Is a party in whose business the exporter, manufacturer, or producer owns or controls, directly or indirectly, any interest, through stock ownership or control or otherwise; or
4. Owns or controls, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, 20 percent or more in the aggregate of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer or producer.

Factual information provided on the record by Union, and supplemented by petitioners, indicates that DKI and Union are both affiliated with Dongkuk Steel Mill (''DSM''). The record shows that DSM holds, directly or indirectly, a controlling share in Union's equity. DSM is in turn controlled by the Korean family which owns the largest block of shares in the company. That same family controls, directly or indirectly, a majority of DKI's equity. The Department therefore determined that Union and DKI are related to each other by virtue of their common affiliation with the same ''parents.'' (*See* the Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, dated May 22, 1995, and entered onto the record of this proceeding on September 28, 1995—hereinafter referred to as ''the collapsing memo'').

It is the Department's practice to collapse related parties when the facts demonstrate that the relationship is such that there is a strong possibility of manipulation of prices and production decisions that would result in circumvention of antidumping law. In determining whether to collapse related parties, the Department considers the following factors:

1. The level of common ownership;
2. Whether there are interlocking officers and directors, (e.g., whether managerial employees or board members of one company sit on the board(s) of directors of the other related party(ies));
3. The existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and
4. Whether the operations of the companies are intertwined (e.g., sharing of sales information; involvement in production and pricing decisions; sharing of facilities or employees; transactions between companies).

With respect to the first factor, the Department has determined that there is a significant level of common ownership of both Union and DKI through DSM and the family that controls it. As noted above, factual information provided on the record by Union, and supplemented by petitioners, indicates that DKI and Union are both affiliated with the DSM group. The same family owns by far the largest block of shares in DSM and is listed in DSM's annual filing to the Korean Securities and Exchange Commission (''KSEC'') as ''controlling'' the company. DSM, in turn, directly and indirectly (through its affiliated companies), own a majority of the equity in Union. The same family also owns, directly and indirectly, a controlling share of DKI's equity.

With respect to the second factor, evidence on the record demonstrates that Union, DSM and DKI have interlocking officers and directors. Two of DKI's board are family members and members of DSM's board. Five of Union's 18 board members are members of DSM's board; of those five, one is a member of the family in question. The president of DKI sits on the boards of both DKI and Union. These interlocking